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Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 1. General

Chapter 1. General Rules and Regulations

§101. Definitions

A. As used in these rules and regulations:

Adjudication—the process for the formulation of a decision or order.

Administrative Procedure Act—Act 382 of 1966 as amended by Act 284 of 1074 and Act 730 of 1975 (R.S. 49:951 et seq.), and any amendments thereto.

Decision or Order—the whole or any part of the final disposition (whatever its form, whether affirmative, negative, injunctive or declaratory) of the secretary, in any matter other than rulemaking, required by Constitution or statute to be determined on the record after notice and an opportunity for a hearing.

Declaratory Ruling or Order—a statement of limited applicability concerning the rights of specific parties or expressing the opinion of the secretary on a particular subject.

Department—the Department of Natural Resources, state of Louisiana.

Party—each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted and/or heard as a party.

Person—any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character, other than the secretary.

Rule—each statement of general applicability and future effect that implements, interprets or prescribes substantive law or policy, or prescribes the procedure or practice requirements of the secretary. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management of the Department of Natural Resources and not affecting private rights or procedures available to the public, declaratory rulings or orders' or intra-agency memoranda.

Rulemaking—the process employed by the secretary for the formulation of a rule.

Secretary—the Secretary of Natural Resources, state of Louisiana.

Violation—a violation of any provision of the secretary's rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§103. Conflicts

A. If any conflict should develop between a rule or an order, and a provision of the Louisiana Constitution or a statute which prohibits such rule or order, the provision of the Constitution or statute shall prevail.

B. The Administrative Procedure Act shall govern all rules and regulations of the secretary, and the secretary shall have all power conferred by that Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§105. Public Information; Adoption of Rules; Availability of Rules and Orders

A. The general course and method of operations of the secretary by which the public may obtain information or make submissions or requests, shall be as provided in the Administrative Procedure Act and by these rules and regulations.

B. The within rules and regulations set forth the nature and requirements of formal and informal procedures available and of forms and instructions used by the secretary.

C. The within rules and regulations are available for public inspection, as are any and all other rules and regulations and all other written statements of policy or interpretations formulated, adopted or used by the secretary in the discharge of his functions, at the offices of the secretary in Baton Rouge.

D. All final orders, decisions, and opinions are available for public inspection at the offices of the secretary in Baton Rouge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§107. Procedure for Adoption of Rules

A. Prior to the adoption, amendment or repeal of any rule or regulation, the secretary will:

1. give at least 15 days' notice of his intended action. The notice will include a statement of either the terms or substance of the intended action, or a description of the subjects and issues involved, and the time when, and the place where, and the manner in which interested persons may present their views thereon. The notice will be mailed to all persons who have made timely request of the secretary for advance notice of rulemaking proceedings and will be published at least once in the *Louisiana Register*. The secretary may, at his discretion, authorize more than 15 days' notice of intended action. For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the *Louisiana Register* in which the notice appears, such publication date to be the publication date as stated on the first page of said issue;

2. afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument will be granted if requested by 25 persons, by a governmental subdivision or agency or by an association having not less than 25 members. The secretary will consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule or rules, the secretary, if requested to do so in writing by an interested person either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption. An individual interested in orally presenting a position on an issue which does not require a separate public hearing, may be allowed to do so at a public meeting called by the secretary, at the discretion of the secretary.

B. If the secretary should find that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than 15 days' notice, he will state in writing to the governor of the state of Louisiana, the attorney general of Louisiana, and the Division of Administration of the state of Louisiana, the reasons for that finding, and will proceed without prior notice or hearing, or upon any abbreviated notice and hearing that finds practicable, to adopt an emergency rule.

C. A rule adopted in substantial compliance with this Section shall be valid, and inadvertent failure to give notice to any person or agency as provided herein shall not invalidate any rule adopted hereunder. A proceeding under §127 of these rules and regulations to contest the validity of any rule on the ground of noncompliance with the procedural requirements of this Section must be commenced within 30 days from the effective date of the rule.

D. An interested person may petition the secretary requesting promulgation, amendment or repeal of a rule. The petition may be in simple form or by letter, and shall be considered and disposed of in writing within 90 days after submission, either by denial with written reasons, or by initiation of rulemaking proceedings in accordance with the provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§109. Filing, Publication, and Taking Effect of Rules

A. The secretary shall file a certified copy of each rule and regulation which he adopts, including a copy of the within rules and regulations, in the office of the Division of Administration.

B. Compilations may omit any rule, the publication of which would be unduly cumbersome, expensive or otherwise inexpedient; but such rule or rules, in processed or printed form will be made available on application to the secretary.

C. Compilations will be made available upon request to agencies or officials of Louisiana free of charge, and to other persons at prices fixed by the Division of Administration to cover mailing and publication costs.

D. Each rule hereafter adopted shall become effective upon its publication in the *Louisiana Register*, said publication to be subsequent to the act of adoption, except that:

1. if a later date is required by statute or specified in the rule, the later date shall be the effective date;

2. subject to applicable constitutional or statutory provisions, an emergency rule shall become effective on the date of its adoption, or on a date specified by the secretary to be not more than 60 days future from the date of its adoption, provided written notice is given within three days of the date of adoption to the governor of Louisiana, the attorney general of Louisiana, and the Division of Administration as provided in §307.B of these rules and regulations. Such emergency rule shall not remain in effect beyond the publication date of the *Louisiana Register* published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in said issue; provided, however, that any emergency rule so published shall not be effective for a period longer than 120 days, but the adoption of an identical rule under §307.A.1 and §307.A.2 is not precluded. The secretary will take appropriate measures to make emergency rules known to the persons who may be affected by them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§111. Investigations

A. Any person may file with the secretary or the executive director, a written complaint of a violation of the secretary's rules and regulations.

B. The secretary may at any time, upon his own initiative, investigate any suspected violation of these rules and regulations.

C. In connection with the investigation of a possible violation of the rules and regulations, the secretary may authorize that public hearings be conducted in accordance with the rules applicable to adjudication proceedings.

D. The secretary has the power to develop facts through either informal investigation procedures or through formal hearings.

E. Investigations shall be for the purpose of determining such questions as whether a violation exists, the scope of the violation, and the persons or parties involved.

F. To the extent practicable, investigatory hearings shall be held in accordance with the rules applicable to adjudicatory proceedings.

G. When the secretary determines that there has been a violation of the Act, or of any of the secretary's rules and regulations, he is authorized to take appropriate action, which may include the initiation of adjudicatory proceedings for enforcement purposes, or the institution of appropriate judicial proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§113. Adjudication Notice; Hearing; Records

A. All hearings shall be public and shall be conducted by the secretary or a presiding officer designated by the secretary to conduct the hearings.

B. The secretary shall fix the time and place for the hearing. All hearings shall be held in a convenient place, accessible to the public, in the city of Baton Rouge. If the secretary deems that the interests of the secretary or any person or party, or the location of the parties or witnesses, or the ends of justice so require, the hearing may be held in any other convenient place of public accessibility within the state.

C. Any hearing may for valid cause be continued by the secretary or the presiding officer.

D. Parties shall have the right, but shall not be required, to be represented by counsel. Any such counsel must be duly licensed to practice law in the state of Louisiana, or be associated in the hearings with such duly licensed counsel.

E. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

F. The notice will include:

1. a statement of the time, place and nature of the hearing;

2. a statement of the legal authority and jurisdiction under which the hearing is to be held;

3. a reference to the particular sections of the statutes and rules involved;

4. a short and simple statement of the matters asserted;

5. the date on which any person who may object to the matters asserted must present to the secretary a written objection. A written objection shall contain a short and simple statement of the basis of the objection.

G. If the secretary or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application or request, a more definite and detailed statement shall be furnished.

H. Opportunity wild be afforded to all parties to timely respond and present evidence on all issues of fact, and argument on all issues of law and policy involved, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

I. Unless precluded by law, informal disposition may be made, at any time, of any case of adjudication by stipulation, agreed settlement, consent order or default.

J. The record in a case of adjudication shall include:

1. all pleadings, motions and intermediate rulings;

2. all evidence received or considered, or a résumé thereof if not transcribed;

3. a statement of matters officially noticed, except matters so obvious that statement of them would serve no useful purpose;

4. offers of proof, objections and rulings thereon;

5. proposed findings and conclusions and exceptions thereto;

6. any decision, opinion or report by the officer presiding at the hearing.

K. The secretary shall make a full transcript of all proceedings and shall, at the request of any party or person, furnish said party or person with a copy of the transcript or any part thereof upon payment of the cost thereof.

L. Findings of fact will be based exclusively on the evidence and on matters officially noticed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§115. Rules of Evidence; Official Notice; Oaths and Affirmations; Subpoenas; Deposition and Discovery

A. In adjudication proceedings:

1. the secretary or presiding officer will admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs, and will give effect to the rules and privileges recognized by law. The secretary or presiding officer will exclude incompetent, irrelevant, immaterial and

unduly repetitious evidence. Objection to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

2. all evidence, including records and documents in the possession of the secretary of which he desires to avail himself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence;

3. notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the secretary's specialized knowledge. Parties will be notified either before or during the hearing, or by reference to preliminary reports or otherwise, of the material to be noticed, including any staff memoranda or data, and they will be afforded an opportunity to contest the admissibility of the material to be noticed. The secretary's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

B. The secretary or the presiding officer appointed by the secretary conducting a proceeding subject to these rules and regulations shall have the power to administer oaths and affirmations, regulate the course of the hearings, and the time and place of continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider simplification of the issues.

C. The secretary or the secretary's presiding officer shall have power to sign and issue subpoenas in the name of the secretary requiring attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence. No subpoena will be issued until the party who wishes to subpoena the witness first deposits with the secretary, a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and 3671. Witnesses subpoenaed to testify before the secretary only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses, as may be fixed by the secretary with reference to the value of the time employed and the degree of learning or skill required. Whenever any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the secretary may apply to the judge of the District Court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt. The provisions of this Part shall not be applicable as to the deposit of sums sufficient to pay all fees and expenses to which a witness in a civil suit is entitled pursuant to R.S. 13:3661 and 3671 when the party requesting production complies with the provisions of the Louisiana Code of Civil Procedure applicable to the waiver of costs for indigents (Articles 5181 through 5188).

D. The presiding officer of the secretary, or any party to a proceeding before him may take the depositions of witnesses, within or without the state of Louisiana, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by these rules or the Administrative Procedure Act. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from evidence by the presiding officer in accordance with the rules of evidence provided in these rules and regulations.

E. The secretary may adopt rules providing for discovery to the extent and in the manner appropriate to its proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§117. Decisions and Orders

A. A final decision or order adverse to a party in an adjudication proceeding will be in writing or will be stated in the record. A final decision will include findings of fact and conclusions of law. If findings of fact are set forth in statutory language, they will be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A party may submit proposed findings of fact and conclusions of law, and, in that event, the decisions shall include a ruling upon each proposed finding and conclusion. Parties will be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order will be delivered or mailed forthwith to each party and to his attorney of record. By written stipulation, the parties may waive, and in the event that there is no contest, the secretary may eliminate, compliance with this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§119. Rehearings

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening or reconsideration by the secretary within 10 days from the date of its entry. The grounds for such action shall be either that:

1. the decision or order is clearly contrary to the law and the evidence;

2. the party has discovered, since the hearing, evidence important to the issues which he could not with due diligence have obtained before or during the hearing;

3. there is a showing that issues not previously considered ought to be examined in order to dispose of the matter;

4. there is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration or review, and the order of the secretary, if granting it, will set forth the grounds which justify such action. Nothing in this Section will prevent rehearing, reopening or reconsideration of a matter by the secretary in accordance with other statutory proceedings applicable to it, or at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening or rehearing, the matter may be heard by the secretary, or it may be referred to a presiding officer. The hearing will be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing is filed timely, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§121. Ex Parte Consultations and Recusations

A. Unless required for the disposition of ex parte matters authorized by law, the secretary or the presiding officer designated to conduct the hearing, shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee or agent engaged in the performance of investigative, prosecuting or advocating functions, except upon notice or opportunity for all parties to participate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§123. Remedies

A. The secretary may issue:

1. decrees or orders requiring a party to cease and desist from any course of conduct or action deemed by the secretary to be inimical to its purposes or aims or any part thereof;

2. decrees or orders requiring a party to take affirmative action to further the interests of the secretary or to correct or insure correction of prior action of a party or otherwise;

3. declaratory decrees or orders as to the policy of the secretary in any regard;

4. generally any decrees or orders to affect the interests of the secretary as to his general aims and purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§125. Judicial Review of Declaratory Orders and Rulings

A. Within 15 days from the decree, or of a declaratory order or ruling, any party affected thereby may petition the Civil District Court for the Parish of East Baton Rouge, for a declaration as to the validity or applicability of any declaratory decree, order or ruling. After the lapse of such period of 15 days, or upon the finality of any order of court with regard thereto, such declaratory decree, order or ruling shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§127. Judicial Review of Validity or Applicability of Rules

A. The validity or applicability of a rule or regulation may be determined in an action for declaratory judgment in the Civil District Court for the Parish of East Baton Rouge, in which the secretary is made a party to the action. An action for a declaratory judgment under this Section may be brought only after the plaintiff has requested the secretary to pass upon the validity or applicability of the rule or regulation in question, and only upon a showing that review of the validity and applicability of the rule or regulation in connection with a review of a final agency decision in a contested-adjudication case would not provide an adequate remedy and would inflict irreparable injury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§129. Judicial Review of Adjudication

A. A person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review thereof, whether or not he has applied to the secretary for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief or trial de novo provided by law. A preliminary, procedural or intermediate action or ruling is immediately reviewable, if review of the final decision would not provide an adequate remedy and would inflict irreparable injury.

B. Proceedings for review may be instituted by filing a petition in the Civil District Court for the Parish of East Baton Rouge within 30 days after the mailing of notice of the final decision by the secretary, or if a rehearing is requested, within 30 days after the decision thereon. Copies of the petition shall be served upon the secretary and on all parties of record.

C. The filing of the petition does not itself stay enforcement of the decision of the secretary, who may, however, grant a stay upon appropriate terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§131. Construction and Effect

A. Nothing in these rules and regulations shall be held to diminish the constitutional rights of any person, or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise provided by law, all requirements or privileges relating to evidence or procedure shall apply equally to the secretary and all persons.

B. If any provision of these rules and regulations shall be found to be in conflict with federal requirements, such conflicting provision of these rules and regulations is hereby declared to be inoperative solely to the extent of such conflict, and such findings or determination shall not affect the operation of the remaining provisions of these rules and regulations in their application to the functions of the secretary.

C. If any provision of these rules and regulations or the application thereof is held to be invalid, the remaining provisions of these rules and regulations or other application thereof shall not be affected, so long as they can be given effect without the invalid provision, and to this end the provisions of these rules and regulations are declared to be severable.

D. These rules and regulations shall take effect upon their approval by the secretary and filing and publication pursuant to the provisions of §309 of these rules and regulations, and no procedural requirement shall be mandatory as to any proceeding instituted prior to the effective date of such requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

Chapter 3. Louisiana Fuel Protection Act of 1979; Implementation of Act 605 of 1979

§301. Definitions

A. As used in these rules and regulations:

Act—Act 605 of 1979, and any amendments thereto.

Administrative Costs—include the wages and salaries of the secretary's staff and employees; the engineering, legal, and operating costs incurred by or on behalf of the secretary; the equipment, supplies and overhead required for the secretary to carry out his functions, and any other similar administrative costs reasonably required by the secretary for operation and management.

Alternate Fuel or *Other Alternate Fuel*—some fuel other than natural gas, coal, and, with the exceptions stated in the federal Power-plant and Industrial Fuel Use Act of 1978, oil.

Applicant—any person who applies for a license pursuant to these rules and regulations.

Application—an application submitted under these rules and regulations for a license to construct or operate support facilities within the jurisdiction of the secretary of Natural Resources, for transfer or renewal of any such license, or for any substantive change in any of the conditions or provisions of any such license.

Application Processing Fees—all fees or charges imposed by the secretary pursuant to these rules and regulations.

Economic Costs—shall include, but not be limited to, costs for facilities and services related to transportation, education, health, highways, roads and streets, police protection, fire protection, sewerage and water facilities and services, sanitation, flood protection, parks and recreation, libraries, and other similar types of community services.

License—a license issued by the secretary, pursuant to these rules and regulations, to any person to construct or operate support facilities within the jurisdiction of the secretary.

Licensee—the holder of a valid license.

Person—has the identical meaning given that term in the Act.

Secretary—the secretary of Natural Resources.

Support Facility—any facility providing an intermediate coal or alternate fuel service essential or useful to the use of, or conversion to, such fuels by powerplants and industries, the availability of which will facilitate economical and orderly use of or conversion to coal or alternate fuel and inure to the benefit of Louisiana citizens using the products produced by the powerplants and industries which utilize the support facility, and which the secretary has determined is required by the public interest of the state to be either licensed by the state under this Act, or if no person is interested in obtaining a license and constructing and operating such support facility, is owned and operated by the department as elsewhere provided in this Act. Support facilities shall include, without exclusion, facilities for loading and unloading, cleaning, blending, and/or storing coal or alternate fuel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:359 (November 1979).

§303. Applications

A. No person shall construct or operate, or cause to be constructed or operated, support facilities within the jurisdiction of the secretary without first filing an application and obtaining a license from the secretary pursuant to the provisions of these rules and regulations.

B. An application shall contain the following general information:

1. a brief summary of the entire application suitable for use by the secretary in giving the notices required by the rules and regulations;

2. the name, address, citizenship, and telephone number of the applicant;

3. the names and addresses of the officers of the applicant;

4. the name and address of the person designated by applicant to receive formal notices or documents;

5. a statement at the end of the application, subscribed and sworn to before a notary public, that the person who signs the application represents that he is authorized and empowered to sign the application on behalf of the applicant and that the contents of the application are true;

6. if the applicant is a corporation, a copy of the applicant's charter or certificate and articles of incorporation, certified by the appropriate official of the state of incorporation.

C. An application shall contain a description of the proposed support facility and the service it will render.

D. An application, based upon facts available at the time of the application, shall contain an analysis of:

1. the extent to which the construction and/or operation of the proposed support facilities may increase the demand on the state of Louisiana and its political subdivisions for public services and facilities, including, but not limited to, schools, parks, transportation facilities, wharves, docks, electricity, water, and sewage facilities, flood protection, police and fire protection, and other physical and social services;

2. an estimate as to the direct and indirect economic, environmental, and administrative costs attributable to the construction and operation of the proposed support facilities;

3. the areas and facilities to be served by the proposed support facilities with specific data as to amounts and types of coal or other alternate fuel to be transported to, and/or refined or used at, each projected destination on an annual basis;

4. all relevant facts showing the extent to which proposed support facilities will contribute to the maintenance and/or development of energy-using industries in Louisiana and to the availability of the products of those industries to Louisiana consumers and industries;

5. all relevant facts showing the extent to which the construction and operation of the proposed support facilities will contribute to increased employment and employment benefits in Louisiana;

6. the projected temporary and permanent demographic effect of the construction and operation of the proposed support facilities;

7. the projected demand for services related to the proposed support facilities, with emphasis on the duration and location of such services. Services as used in these rules and regulations include, but are not limited to, skilled and unskilled labor, barge services, dock workers, contractors, fabricators, engineering and other professional consultants, suppliers, surveyors, and repair and maintenance services and personnel, and living accommodations.

E. An application shall contain a statement by the applicant that he will comply with any reasonable conditions the secretary may prescribe in accordance with the provisions of the Act or the secretary's rules and regulations, with such reasonable conditions to be contained in the license.

F. An applicant shall designate those portions of any information submitted to the secretary, as part of an application, which concern or relate to trade secrets or which are by nature confidential.

G. Each applicant shall pay to the secretary such application processing fees as provided elsewhere in these rules and regulations.

H. Ten copies of an application shall be filed with the secretary. After the filing of an application, the secretary shall determine, as promptly as reasonably possible, whether or not such application contains all of the information required by these rules and regulations.

I. If the secretary determines that an application appears to contain the information required by these rules and regulations, he shall publish notice of the filing of the application and a summary of the application immediately in the official journal of the state of Louisiana. A copy of the notice and summary shall also be mailed to all interested persons who have made written request of the secretary for such information.

J. If the secretary determines that all the required information is not contained in the application, the secretary shall promptly notify the applicant of such deficiencies in writing and require that the deficiencies be corrected within a certain period of time or the application will be denied for failure to do so.

K. The secretary may hold such investigatory or adjudicatory hearings as he deems necessary for a proper review and consideration of an application.

L. At any time during an application proceeding, the secretary may require an applicant to submit such additional information as the secretary deems necessary in order to meet the requirements of these rules and regulations and other applicable law, and to enable the secretary to carry out his responsibilities thereunder.

M. An application may be amended or withdrawn at any time before the secretary renders a final decision thereon, by submitting 10 copies of the amendment, or a written request for withdrawal, to the secretary. If information in an application becomes inaccurate or incomplete after it is filed but before a final decision is rendered on the application, the applicant shall promptly furnish the correct or additional information.

N. Unless the context clearly indicates otherwise, all information required to be furnished by this Section shall cover the term of a license. All projections and estimates required by this Section shall be uniformly expressed and shall be estimated in accordance with the best available procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:359 (November 1979).

§305. Application Processing Fees

A. Any person who files an application with the secretary shall reimburse the secretary in accordance with these rules and regulations, for all direct costs incurred by or on behalf of the secretary in processing any such application.

B. Any person who files an application with the secretary for a license to construct or operate support facilities within the secretary's jurisdiction shall remit at the time such application is filed an initial application processing fee of $100 represented by a certified or cashier's check drawn on a bank or trust company doing business under the laws of the state of Louisiana or the United States, payable to the state of Louisiana, Department of Natural Resources.

C. The application processing fee provided for in the preceding paragraph, and all interest accrued thereon, shall be used by the secretary to compensate the secretary for all direct costs incurred by or on behalf of the secretary in processing such applications.

D. Should the application be withdrawn by the applicant before the issuance by the secretary to the applicant of a license to construct or operate support facilities, the secretary shall refund to the applicant any portion of the application fee remaining after payment by the secretary of all direct costs incurred in processing such application through the date of such withdrawal.

E. The secretary shall periodically make a determination of the amount of all direct costs incurred by or on behalf of the secretary in processing an application.

F. The secretary shall assess, as application processing fees, all such direct costs against the person or persons whose application has given rise to the direct costs incurred and sought to be recovered, and shall serve on each such person a "Notice of Assessment". Such person or persons shall thereafter make full payment of such fees to the secretary within 30 days from receipt of Notice of Assessment.

G. Any person on whom a Notice of Assessment is served under these regulations shall be entitled to a hearing before the secretary on such assessment, provided a written request for a hearing is filed with the secretary within 30 days after receipt of the Notice of Assessment.

H. The secretary's general rules and regulations and the Louisiana Administrative Procedure Act (R.S. 49:951 et seq.) shall apply to any hearing held in connection with any Notice of Assessment under these rules and regulations.

I. Should any person fail to pay any application processing fees when due, such person shall pay interest at the legal rate per annum on the unpaid balance of such assessment from the date the assessment is due until paid.

J. The secretary shall maintain such records as may be necessary in order to identify, determine and recover all application processing fees pursuant to these rules and regulations, and the secretary shall make such records available to interested persons in accordance with applicable law.

K. Application processing fees recovered by the secretary pursuant to these rules and regulations shall be limited to the amount necessary to compensate the secretary for the actual costs incurred in processing the application.

L. This Section shall not be interpreted to enlarge or diminish the right of the state of Louisiana, or any political subdivision thereof, to impose any other valid fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:360 (November 1979).

§307. Licenses

A. No license shall issue unless the secretary determines that:

1. the facilities which are the subject of a license application to the secretary are *support facilities* within the term and meaning of Act 605 of 1979 and these rules and regulations;

2. the construction and operation of the proposed support facilities will promote the economic and industrial well being of the state of Louisiana, will be an economically viable project as shown by the data provided in the application, and will be consistent with the public interest as declared in the Act. In making the finding of economic viability and public interest, the secretary shall consider the effect of an application on existing licensed support facilities and shall not issue a license which would be contrary to the state plan promulgated by the secretary pursuant to Act 605 of 1979;

3. the proposed support facilities will be constructed and operated in conformance with the Act, the rules and regulations of the secretary, other applicable law and conditions of the license;

4. the applicant has reimbursed the secretary for all direct costs incurred by or on behalf of the secretary in processing the application and has paid to the secretary any other sums due the secretary under applicable law.

B. A license shall contain the name and address of the licensee, and the licensee's agent for service of process in the state of Louisiana.

C. A license shall contain a description of the support facilities licensed.

D. A license shall describe all activities authorized by the license.

E. A license shall be subject to and contain such reasonable conditions as the secretary deems necessary to carry out the purposes of the Act and the secretary's rules and regulations, including, but not limited to, conditions requiring that the licensee:

1. comply with all applicable laws and regulations, now in effect or hereafter adopted or amended;

2. construct and operate the support facilities in accordance with the description of such construction and operation in the license;

3. promptly provide the secretary with the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the design, construction or operation of support facilities within the secretary's jurisdiction, and a description of any such contract;

4. notify the secretary of any substantive changes in any data submitted to the secretary;

5. cooperate with the secretary in monitoring the construction and operation of the licensed support facilities;

6. submit detailed construction drawings, plans and specifications to the secretary for all components of the support facilities sufficiently in advance of commencement of construction of such components to enable the secretary to properly review such drawings, plans and specifications for conformance with the provisions and conditions of a license, the secretary's rules and regulations, and other applicable law;

7. afford access, at reasonable times, to licensed support facilities to representatives of the secretary for the purposes of inspection of relevant records, files, papers, processes, controls, operations, and facilities for the purpose of ascertaining the state of compliance with the license, the Act, and the rules, regulations, and orders of the secretary.

F. At the time of issuance of a license by the secretary, the secretary and licensee shall enter into a written agreement which shall provide that:

1. a licensee which exercises its rights under the license shall pay to the secretary reasonable fees and charges lawfully recoverable by the secretary to compensate for direct costs incurred by the secretary which pertain to the licensed support facilities;

2. a licensee which exercises rights under the license shall indemnify and hold harmless the secretary from and against any and all liability, loss, demand claims, direct costs, damages, expenses and attorneys fees, and any and all liability therefor, which the secretary may sustain or incur, arising from or connected with acts or omissions of the licensee, its agents, servants, employees or contractors with respect to the location, design, construction or operation of support facilities; provided, however, that the licensee shall not be required to indemnify the secretary for damages resulting solely from negligent acts or omissions on the part of the secretary or his agents, servants, employees or contractors.

G. Except as otherwise provided in these rules and regulations, a license shall be for such term as determined by the secretary.

H. A license may be revoked, suspended, or modified by the secretary for the following reasons:

1. the willful making of a false statement or willful misrepresentation of a material fact in connection with securing or maintaining such license;

2. failure to comply with, or respond to, lawful inquiries, rules, regulations, or orders of the secretary or the conditions of any license issued by the secretary.

I. The secretary may not revoke, suspend, annul, modify or withdraw a license unless, prior to the institution of proceedings, the secretary gives notice by certified mail to the licensee of facts which warrant the intended action, and the licensee is given an opportunity at a hearing to show compliance with all lawful requirements for the retention of the license. If the secretary finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in an order, summary suspension of a license may be ordered pending proceedings for suspension, revocation or other action. These proceedings will be promptly instituted and a decision promptly rendered. All hearings held on the suspension, revocation, annulment or withdrawal of a license will be governed by the secretary's general rules and regulations concerning adjudications.

J. Upon the filing of an application by a licensee, a license issued to such licensee under these rules and regulations may be transferred, if the secretary finds that such transfer will be consistent with the public interest as declared in the Act and that the transferee meets all requirements of the Act, the secretary's rules and regulations and other applicable law.

K. The secretary may make clerical corrections in a license upon written request by the licensee demonstrating clearly a need for such changes.

L. Before the secretary may approve any change by a licensee to the licensed support facilities which would constitute a substantive change in any condition or provision of a license, a licensee shall file an application therefor with the secretary and the secretary shall give such application full consideration as provided in these rules and regulations.

M. Licenses may be renewed by following the procedures prescribed herein for obtaining issuance of a license. A license shall be renewed if the secretary finds that the licensee has complied with all terms and conditions of the license.

N. When a licensee has made timely and sufficient application for renewal of a license with reference to any activity of a continuing nature, his existing license shall not expire until the application has been determined finally by the secretary, and, in case the application is denied or the terms of the renewed license limited, until the last day for seeking review of the secretary's order, or a later date fixed by order of the reviewing court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:359 (November 1979).

§309. Coordination; Enforcement

A. The secretary shall coordinate, consult and cooperate with any federal or state agencies, or political subdivisions of the state, having an interest in the construction and operation of support facilities within the secretary's jurisdiction.

B. Whenever enforcement of any provision of these rules and regulations is warranted, the secretary may initiate and pursue appropriate administrative procedures and may issue such orders and decrees as may be necessary and authorized by the secretary's general rules and regulations, and the secretary may initiate and pursue all appropriate judicial remedies to assure compliance with these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:359 (November 1979).

Chapter 7. Coastal Management

Subchapter A. Definitions

§700. Definitions

Administrator—the administrator of the Coastal Management Division of the Department of Natural Resources.

Advanced Mitigation Project—a project implemented to create, restore, protect, and/or enhance wetlands for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (advanced mitigation credits). Such projects must be approved by the secretary prior to implementation, and the advanced mitigation credits shall have limited utility for the purpose of compensating for the ecological values lost due to a permitted activity.

Affected Landowner—the owner of the land on which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

Affected Parish—the parish in which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

After-the-Fact Permit—a coastal use permit which is issued after the commencement of a use. Such a permit may only be issued after all legal issues resulting from the commencement of a use without a coastal use permit have been resolved.

Alterations of Waters Draining in Coastal Waters—those uses or activities that would alter, change, or introduce polluting substances into runoff and thereby modify the quality of coastal waters. Examples include water control impoundments, upland and water management programs, and drainage projects from urban, agricultural and industrial developments.

Approved Local Program—a local coastal management program which has been and continues to be approved by the secretary pursuant to 214.28 of the State and Local Coastal Resources Management Act (SLCRMA).

Average Annual Habitat Unit—a unit of measure of ecological value; average annual habitat units are calculated by the formula: (sum of cumulative habitat units for a given project scenario) / (project years).

Best Practical Techniques—those methods or techniques which would result in the greatest possible minimization of the adverse impacts listed in §701.G and in specific guidelines applicable to the proposed use. Those methods or techniques shall be the best methods or techniques which are in use in the industry or trade or among practitioners of the use, and which are feasible and practical for utilization.

Coastal Use Permit—a permit required by 214.30 of the SLCRMA. The term does not mean or refer to, and is in addition to, any other permit or approval required or established pursuant to any other constitutional provision or statute.

Coastal Water Dependent Uses—those which must be carried out on, in or adjacent to coastal water areas or wetlands because the use requires access to the water body or wetland or requires the consumption, harvesting or other direct use of coastal resources, or requires the use of coastal water in the manufacturing or transportation of goods. Examples include surface and subsurface mineral extraction, fishing, ports and necessary supporting commercial and industrial facilities, facilities for the construction, repair and maintenance of vessels, navigation projects, and fishery processing plants.

Coastal Waters—those bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).

Coastal Zone—the term *coastal zone* shall have the same definition as provided in 214.24 of the SLCRMA.

Compensatory Mitigation—replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of ecological values caused by a permitted activity.

Conservation Servitude—as defined at R.S. 9:1272(1), means a nonpossessory interest of a holder in immovable property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of immovable property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

Contaminant—an element causing pollution of the environment that would have detrimental effects on air or water quality or on native floral or faunal species.

Corps—the U.S. Army Corps of Engineers.

Cumulative Habitat Unit—a unit of measure of ecological value; for each time interval within the project years, cumulative habitat units are calculated by the formula: CHUs = $(T_2 - T_1)$ □ {[$(A_1$ □ $HSI_1 + A_2$ □ $HSI_2)$ / 3] + [$(A_2$ □ $HSI_1 + A_1$ □ $HSI_2)$ / 6]}, where T_1 = first year of time interval, T_2 = last year of time interval, A_1 = acres of habitat at beginning of time interval, A_2 = acres of habitat at end of time interval, HSI_1 = habitat suitability index at beginning of time interval, and HSI_2 = habitat suitability index at end of time interval; the source of this formula is the U.S. Fish and Wildlife Service's Ecological Services Manual 102, Habitat Evaluation Procedures.

Cumulative Impacts—impacts increasing in significance due to the collective effects of a number of activities.

Department—the Department of Natural Resources.

Development Levees—those levees and associated water control structures whose purpose is to allow control of water levels within the area enclosed by the levees to facilitate drainage or development within the leveed areas. Such levee systems also commonly serve for hurricane or flood protection, but are not so defined for purposes of these guidelines.

Direct and Significant Impact—a direct and significant modification or alteration in the physical or biological characteristics of coastal waters which results from an action or series of actions caused by man.

Ecological Value—the ability of an area to support vegetation and fish and wildlife populations.

Endangered Species—as defined in the Endangered Species Act, as amended, any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary of the U.S. Department of Interior to constitute a pest whose protection under the provisions of the Endangered Species Act, as amended, would present an overwhelming and overriding risk to man.

Expectable Adverse Conditions—natural or man-made hazardous conditions which can be expected or predicted to occur at regular intervals. Included are such events as 125 mile per hour hurricanes and associated tides, 100 year floods and reasonably probable accidents.

Fastlands—lands surrounded by publicly-owned, maintained, or otherwise validly existing levees or natural formations as of January 1, 1979, or as may be lawfully constructed in the future, which levees or natural formations would normally prevent activities, not to include the pumping of water for drainage purposes, within the surrounded area from having direct and significant impacts on coastal waters.

Feasible and Practical—those locations, methods and/or practices which are of established usefulness and efficiency and allow the use or activity to be carried out successfully.

Federal Advisory Agencies—include, but are not limited to, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, the U.S. Environmental Protection Agency, and the U.S. Natural Resources Conservation Service.

Force Majeure—an act of God, war, blockade, lightning, fire, storm, flood, and any other cause which is not within the control of the party claiming force majeure.

Future with Project Scenario—portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would be implemented.

Future without Project Scenario—portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would not be implemented.

Geologic Review Procedure—a process by which alternative methods, including alternative locations, for oil and gas exploration are evaluated on their environmental, technical, and economic merits on an individual basis; alternative methods, including alternative locations, of oil and gas production and transmission activities which are specifically associated with the proposed exploration activity shall also be evaluated in this process. These alternative methods, including alternative locations, are presented and evaluated at a meeting by a group of representatives of the involved parties. A geologic review group is composed, at a minimum, of representatives of the applicant, a petroleum geologist and a petroleum engineer representing the Coastal Management Division and/or the New Orleans District Corps of Engineers, and a representative of the Coastal Management Division Permit Section, and may include, but is not limited to, representatives of the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Environmental Quality, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, and the U.S. Environmental Protection Agency.

Governmental Body—any public department, agency, bureau, authority, or subdivision of the government of the United States or the state of Louisiana and shall include parishes and municipalities and subdivisions thereof and those governmental agencies constitutionally established.

Guidelines—those rules and regulations adopted pursuant to 214.27 of the SLCRMA.

Habitat—the natural environment where a plant or animal population lives.

Habitat Types—the general wetland vegetative communities which exist in the Louisiana Coastal Zone, including fresh marsh, intermediate marsh, brackish marsh, saline marsh, fresh swamp, and bottomland hardwoods.

Holder—as defined at R.S. 9:1272(2), means:

1. a governmental body empowered to hold an interest in immovable property under the laws of this state or the United States; or

2. a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of immovable property, assuring the availability of immovable property for agricultural, forest, recreational, or

open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

Hurricane or Flood Protection Levees—those levees and associated water control structures whose primary purpose is to prevent occasional surges of flood or storm generated high water. Such levee systems do not include those built to permit drainage or development of enclosed wetland areas.

Hydrologic and Sediment Transport Modifications—those uses and activities intended to change water circulation, direction of flow, velocity, level, or quality or quantity of transported sediment. Examples include locks, water gates, impoundments, jetties, groins, fixed and variable weirs, dams, diversion pipes, siphons, canals, and surface and groundwater withdrawals.

Hydrologic Basin—one of the nine general drainage areas within the Louisiana Coastal Zone as delineated on pages A-2 and A-3 of the Louisiana Coastal Wetlands Conservation and Restoration Plan, April 1990.

Impoundment Levees—those levees and associated water control structures whose primary purpose is to contain water within the levee system either for the prevention of the release of pollutants, to create fresh water reservoirs, or for management of fish or wildlife resources.

Infrastructure—those systems which provide needed support for human social institutions and developments, including transportation systems, public utilities, water and sewerage systems, communications, educational facilities, health services, law enforcement and emergency preparedness.

In-Lieu Permit—those permits issued in-lieu of coastal use permits pursuant to 214.31 of the SLCRMA.

Levees—any use or activity which creates an embankment to control or prevent water movement, to retain water or other material, or to raise a road or other lineal use above normal or flood water levels. Examples include levees, dikes and embankments of any sort.

Linear Facilities—those uses and activities which result in creation of structures or works which are primarily linear in nature. Examples include pipelines, roads, canals, channels, and powerlines.

Local Government—a governmental body having general jurisdiction and operating at the parish level.

Local Program—same as *approved local program*.

Marsh—wetlands subject to frequent inundation in which the dominant vegetation consists of reeds, sedges, grasses, cattails, and other low growth.

Minerals—oil, gas, sulfur, geothermal, geopressured, salt, or other naturally occurring energy or chemical resources which are produced from below the surface in the coastal zone. Not included are such surface resources as clam or oyster shells, dirt, sand, or gravel.

Mitigation—all actions taken by a permittee to avoid, minimize, restore, and compensate for ecological values lost due to a permitted activity.

Mitigation Bank—an area identified, with specific measures implemented to create, restore, protect, and/or enhance wetlands, for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (mitigation credits). Those credits may be donated, sold, traded, or otherwise used for the purpose of compensating for the ecological values lost due to a permitted activity.

Off-Site—not within or adjoining the area directly modified by the permitted activity and not directly related to implementation of the permitted activity.

Oil, Gas and Other Mineral Activities—those uses and activities which are directly involved in the exploration, production, and refining of oil, gas, and other minerals. Examples include geophysical surveying, establishment of drill sites and access to them, drilling, on site storage of supplies, products and waste materials, production, refining, and spill cleanup.

On-Site—within or adjoining the area directly modified by the permitted activity or directly related to implementation of the permitted activity.

Overriding Public Interest—the public interest benefits of a given activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, as in the case of certain mineral extraction, production, and transportation activities or construction of flood protection facilities critical for protection of existing infrastructure.

Particular Areas—areas within the coastal zone of a parish with an approved local program which have unique and valuable characteristics requiring special management procedures. Such areas shall be identified, designated, and managed by the local government following procedures consistent with those for special areas.

Permit—a coastal use permit, or an in-lieu permit.

Permitting Body—either the Department of Natural Resources or a local government with an approved local program with authority to issue, or that has issued, a coastal use permit authorized by the SLCRMA.

Person—any natural individual, partnership, association, trust, corporation, public agency or authority, governmental body, or any other legal or juridical person created by law.

Project Years—the anticipated number of years that the proposed activity would have a negative or positive impact on the ecological value of the site. Project years shall be 20 years for marsh habitats and 50 years for forested habitats, unless it is clearly demonstrated by the applicant and accepted by the secretary to be shorter in duration.

Public Hearing—a hearing announced to the public at least 30 days in advance, at which all interested persons shall be afforded a reasonable opportunity to submit data, views or arguments, orally or in writing. At the time of the

announcement of the public hearing all materials pertinent to the hearing, including documents, studies, and other data, in the possession of the party calling the hearing, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the party which conducted the hearing.

Radioactive Wastes—wastes containing source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

Residential Coastal Use—any coastal use associated with the construction or modification of one single-family, duplex, or triplex residence or camp. It shall also include the construction or modification to any outbuilding, bulkhead, pier, or appurtenance on a lot on which there exists a single-family, duplex, or triplex residence or camp or on a water body which is immediately adjacent to such lot.

Secondary Impact—an impact which would:

1. result from the proposed activity;

2. cause significant modifications or alterations to the physical characteristics of acreage beyond the limit of the area depicted as being altered in the accepted permit application drawings; and

3. be identified and quantified by the secretary based on an evaluation of similar and previously implemented activities.

Secretary—the Secretary of the Department of Natural Resources, or his designee.

Sediment Deposition Systems—controlled diversions of sediment-laden water in order to initiate land building or sediment nourishment or to minimize undesirable deposition of sediment in navigation channels or habitat areas. Typical activities include diversion channels, jetties, groins, or sediment pumps.

Shoreline Modifications—those uses and activities planned or constructed with the intention of directly or indirectly changing or preventing change of a shoreline. Examples include bulkheading, piers, docks, wharves, slips, and short canals, and jetties.

SLCRMA—the State and Local Coastal Resources Management Act of 1978, Act 361 of 1978 as amended, R.S. 49:214.21-49:214.42.

Spoil Deposition—the deposition of any excavated or dredged material.

State Advisory Agencies—include, but are not limited to, the Louisiana Department of Wildlife and Fisheries and the Louisiana Department of Environmental Quality.

Surface Alterations—those uses and activities which change the surface or usability of a land area or water bottom. Examples include fill deposition, land reclamation, beach nourishment, dredging (primarily areal), clearing, draining, surface mining, construction and operation of transportation, mineral, energy and industrial facilities, and industrial, commercial, and urban developments.

Third Party Right of Enforcement—as defined at R.S. 9:1272.(3), means a right provided in a conservation servitude to enforce any of the terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

Toxic Substances—those substances which, by their chemical, biological or radioactive properties, have the potential to endanger human health or other living organisms or ecosystems, by means of acute or chronic adverse effects, including poisoning, mutagenic, teratogenic, or carcinogenic effect.

Unavoidable Net Loss of Ecological Values—the net loss of ecological value that is anticipated to occur as the result of a permitted/authorized activity, despite all efforts, required by the guidelines, to avoid, minimize, and restore the permitted/authorized impacts.

Uplands—lands 5 feet or more above sea level, fastlands, or all lands outside the coastal zone.

Use—any use or activity within the coastal zone which has a direct and significant impact on coastal waters.

Waste—any material for which no use or reuse is intended and which is to be discarded.

Waste Disposal—those uses and activities which involve the collections, storage and discarding or disposing of any solid or liquid material. Examples include littering; landfill; open dumping; incineration; industrial waste treatment facilities; sewerage treatment; storage in pits, ponds, or lagoons; ocean dumping and subsurface disposal.

Water or Marsh Management Plan—a systematic development and control plan to improve and increase biological productivity, or to minimize land loss, saltwater intrusion, erosion or other such environmental problems, or to enhance recreation.

Wetlands—

1. for the purposes of this Chapter except for §724, open water areas or areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions;

2. for the purposes of §724 (as defined in R.S. 49:214.41), an open water area or an area that is inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, but specifically excluding fastlands and lands more than 5 feet above sea level which occur in the designated coastal zone of the state. Wetlands generally include swamps, marshes, bogs, and similar areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:516 (March 2002).

Subchapter B. Coastal Use Guidelines

Coastal use guidelines as approved by the House Natural Resources Committee on July 9, 1980, the Senate Natural Resources Committee on July 11, 1980, and the governor on July 24, 1980.

§701. Guidelines Applicable to All Uses

A. The guidelines must be read in their entirety. Any proposed use may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with.

B. Conformance with applicable water and air quality laws, standards and regulations, and with those other laws, standards and regulations which have been incorporated into the coastal resources program shall be deemed in conformance with the program except to the extent that these guidelines would impose additional requirements.

C. The guidelines include both general provisions applicable to all uses and specific provisions applicable only to certain types of uses. The general guidelines apply in all situations. The specific guidelines apply only to the situations they address. Specific and general guidelines should be interpreted to be consistent with each other. In the event there is an inconsistency, the specific should prevail.

D. These guidelines are not intended to nor shall they be interpreted so as to result in an involuntary acquisition or taking of property.

E. No use or activity shall be carried out or conducted in such a manner as to constitute a violation of the terms of a grant or donation of any lands or waterbottoms to the state or any subdivision thereof. Revocations of such grants and donations shall be avoided.

F. Information regarding the following general factors shall be utilized by the permitting authority in evaluating whether the proposed use is in compliance with the guidelines:

1. type, nature, and location of use;

2. elevation, soil, and water conditions and flood and storm hazard characteristics of site;

3. techniques and materials used in construction, operation, and maintenance of use;

4. existing drainage patterns and water regimes of surrounding area including flow, circulation, quality, quantity, and salinity; and impacts on them;

5. availability of feasible alternative sites or methods of implementing the use;

6. designation of the area for certain uses as part of a local program;

7. economic need for use and extent of impacts of use on economy of locality;

8. extent of resulting public and private benefits;

9. extent of coastal water dependency of the use;

10. existence of necessary infrastructure to support the use and public costs resulting from use;

11. extent of impacts on existing and traditional uses of the area and on future uses for which the area is suited;

12. proximity to and extent of impacts on important natural features such as beaches, barrier islands, tidal passes, wildlife and aquatic habitats, and forest lands;

13. the extent to which regional, state, and national interests are served including the national interest in resources and the siting of facilities in the coastal zone as identified in the coastal resources program;

14. proximity to, and extent of impacts on, special areas, particular areas, or other areas of particular concern of the state program or local programs;

15. likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts;

16. proximity to and extent of impacts on public lands or works, or historic, recreational, or cultural resources;

17. extent of impacts on navigation, fishing, public access, and recreational opportunities;

18. extent of compatibility with natural and cultural setting;

19. extent of long term benefits or adverse impacts.

G. It is the policy of the coastal resources program to avoid the following adverse impacts. To this end, all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable significant:

1. reductions in the natural supply of sediment and nutrients to the coastal system by alterations of freshwater flow;

2. adverse economic impacts on the locality of the use and affected governmental bodies;

3. detrimental discharges of inorganic nutrient compounds into coastal waters;

4. alterations in the natural concentration of oxygen in coastal waters;

5. destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;

6. adverse disruption of existing social patterns;

7. alterations of the natural temperature regime of coastal waters;

8. detrimental changes in existing salinity regimes;

9. detrimental changes in littoral and sediment transport processes;

10. adverse effects of cumulative impacts;

11. detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging;

12. reductions or blockage of water flow or natural circulation patterns within or into an estuarine system or a wetland forest;

13. discharges of pathogens or toxic substances into coastal waters;

14. adverse alteration or destruction of archaeological, historical, or other cultural resources;

15. fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas;

16. adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;

17. adverse alteration or destruction of public parks, shoreline access points, public works, designated recreation areas, scenic rivers, or other areas of public use and concern;

18. adverse disruptions of coastal wildlife and fishery migratory patterns;

19. land loss, erosion, and subsidence;

20. increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards;

21. reduction in the long term biological productivity of the coastal ecosystem.

H.1. In those guidelines in which the modifier "maximum extent practicable" is used, the proposed use is in compliance with the guideline if the standard modified by the term is complied with. If the modified standard is not complied with, the use will be in compliance with the guideline if the permitting authority finds, after a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use as set forth in Subsection F above, and a balancing of their relative significance, that the benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the modified standard and there are no feasible and practical alternative locations, methods, and practices for the use that are in compliance with the modified standard and:

a. significant public benefits will result from the use; or

b. the use would serve important regional, state, or national interests, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program, or;

c. the use is coastal water dependent.

2. The systematic consideration process shall also result in a determination of those conditions necessary for the use to be in compliance with the guideline. Those conditions shall assure that the use is carried out utilizing those locations, methods, and practices which maximize conformance to the modified standard; are technically, economically, environmentally, socially, and legally feasible and practical; and minimize or offset those adverse impacts listed in §701.G and in the Subsection at issue.

I. Uses shall to the maximum extent practicable be designed and carried out to permit multiple concurrent uses which are appropriate for the location and to avoid unnecessary conflicts with other uses of the vicinity.

J. These guidelines are not intended to be, nor shall they be, interpreted to allow expansion of governmental authority beyond that established by R.S. 49:214.21-49:214.42, as amended; nor shall these guidelines be interpreted so as to require permits for specific uses legally commenced or established prior to the effective date of the coastal use permit program nor to normal maintenance or repair of such uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§703. Guidelines for Levees

A. The leveeing of unmodified or biologically productive wetlands shall be avoided to the maximum extent practicable.

B. Levees shall be planned and sited to avoid segmentation of wetland areas and systems to the maximum extent practicable.

C. Levees constructed for the purpose of developing or otherwise changing the use of a wetland area shall be avoided to the maximum extent practicable.

D. Hurricane and flood protection levees shall be located at the nonwetland/wetland interface or landward to the maximum extent practicable.

E. Impoundment levees shall only be constructed in wetland areas as part of approved water or marsh management projects or to prevent release of pollutants.

F. Hurricane or flood protection levee systems shall be designed, built and thereafter operated and maintained utilizing best practical techniques to minimize disruptions of existing hydrologic patterns, and the interchange of water, beneficial nutrients, and aquatic organisms between enclosed wetlands and those outside the levee system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§705. Guidelines for Linear Facilities

A. Linear use alignments shall be planned to avoid adverse impacts on areas of high biological productivity or irreplaceable resource areas.

B. Linear facilities involving the use of dredging or filling shall be avoided in wetland and estuarine areas to the maximum extent practicable.

C. Linear facilities involving dredging shall be of the minimum practical size and length.

D. To the maximum extent practicable, pipelines shall be installed through the "push ditch" method and the ditch backfilled.

E. Existing corridors, rights-of-way, canals, and streams shall be utilized to the maximum extent practicable for linear facilities.

F. Linear facilities and alignments shall be, to the maximum extent practicable, designed and constructed to permit multiple uses consistent with the nature of the facility.

G. Linear facilities involving dredging shall not traverse or adversely affect any barrier island.

H. Linear facilities involving dredging shall not traverse beaches, tidal passes, protective reefs, or other natural gulf shoreline unless no other alternative exists. If a beach, tidal pass, reef, or other natural gulf shoreline must be traversed for a non-navigation canal, they shall be restored at least to their natural condition immediately upon completion of construction. Tidal passes shall not be permanently widened or deepened except when necessary to conduct the use. The best available restoration techniques which improve the traversed area's ability to serve as a shoreline shall be used.

I. Linear facilities shall be planned, designed, located, and built using the best practical techniques to minimize disruption of natural hydrologic and sediment transport patterns, sheet flow, and water quality and to minimize adverse impacts on wetlands.

J. Linear facilities shall be planned, designed, and built using the best practical techniques to prevent bank slumping and erosion, and saltwater intrusion, and to minimize the potential for inland movement of storm-generated surges. Consideration shall be given to the use of locks in navigation canals and channels which connect more saline areas with fresher areas.

K. All nonnavigation canals, channels, and ditches which connect more saline areas with fresher areas shall be plugged at all waterway crossings and at intervals between crossings in order to compartmentalize them. The plugs shall be properly maintained.

L. The multiple use of existing canals, directional drilling, and other practical techniques shall be utilized to the maximum extent practicable to minimize the number and size of access canals, to minimize changes of natural systems, and to minimize adverse impacts on natural areas and wildlife and fisheries habitat.

M. All pipelines shall be constructed in accordance with Parts 191, 192, and 195 of Title 49 of the Code of Federal Regulations, as amended, and in conformance with the Commissioner of Conservation's Pipeline Safety Rules and Regulations and those safety requirements established by R.S. 45:408, whichever would require higher standards.

N. Areas dredged for linear facilities shall be backfilled or otherwise restored to the pre-existing conditions upon cessation of use for navigation purposes to the maximum extent practicable.

O. The best practical techniques for site restoration and revegetation shall be utilized for all linear facilities.

P. Confined and dead end canals shall be avoided to the maximum extent practicable. Approved canals must be designed and constructed using the best practical techniques to avoid water stagnation and eutrophication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§707. Guidelines for Dredged Spoil Deposition

A. Spoil shall be deposited utilizing the best practical techniques to avoid disruption of water movement, flow, circulation, and quality.

B. Spoil shall be used beneficially to the maximum extent practicable to improve productivity or create new habitat, reduce or compensate for environmental damage done by dredging activities, or prevent environmental damage. Otherwise, existing spoil disposal areas or upland disposal shall be utilized to the maximum extent practicable rather than creating new disposal areas.

C. Spoil shall not be disposed of in a manner which could result in the impounding or draining of wetlands or the creation of development sites unless the spoil deposition is part of an approved levee or land surface alteration project.

D. Spoil shall not be disposed of on marsh, known oyster or clam reefs, or in areas of submersed vegetation to the maximum extent practicable.

E. Spoil shall not be disposed of in such a manner as to create a hindrance to navigation or fishing, or hinder timber growth.

F. Spoil disposal areas shall be designed and constructed and maintained using the best practical techniques to retain the spoil at the site, reduce turbidity, and reduce shoreline erosion when appropriate.

G. The alienation of state-owned property shall not result from spoil deposition activities without the consent of the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§709. Guidelines for Shoreline Modification

A. Nonstructural methods of shoreline protection shall be utilized to the maximum extent practicable.

B. Shoreline modification structures shall be designed and built using best practical techniques to minimize adverse environmental impacts.

C. Shoreline modification structures shall be lighted or marked in accordance with U.S. Coast Guard regulations, not interfere with navigation, and should foster fishing, other recreational opportunities, and public access.

D. Shoreline modification structures shall be built using best practical materials and techniques to avoid the introduction of pollutants and toxic substances into coastal waters.

E. Piers and docks and other harbor structures shall be designed and built using best practical techniques to avoid obstruction of water circulation.

F. Marinas and similar commercial and recreational developments shall to the maximum extent practicable not be located so as to result in adverse impacts on open productive oyster beds, or submersed grass beds.

G. Neglected or abandoned shoreline modification structures, piers, docks, and mooring and other harbor structures shall be removed at the owner's expense, when appropriate.

H. Shoreline stabilization structures shall not be built for the purpose of creating fill areas for development unless part of an approved surface alteration use.

I. Jetties, groins, breakwaters, and similar structures shall be planned, designed, and constructed so as to avoid to the maximum extent practicable downstream land loss and erosion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§711. Guidelines for Surface Alterations

A. Industrial, commercial, urban, residential, and recreational uses are necessary to provide adequate economic growth and development. To this end, such uses will be encouraged in those areas of the coastal zone that are suitable for development. Those uses shall be consistent with the other guidelines and shall, to the maximum extent practicable, take place only:

1. on lands 5 feet or more above sea level or within fast lands; or

2. on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered, and:

a. the land is already in high intensity of development use; or

b. there is adequate supporting infrastructure; or

c. the vicinity has a tradition of use for similar habitation or development.

B. Public and private works projects such as levees, drainage improvements, roads, airports, ports, and public utilities are necessary to protect and support needed development and shall be encouraged. Such projects shall, to the maximum extent practicable, take place only when:

1. they protect or serve those areas suitable for development pursuant to §711.A; and

2. they are consistent with the other guidelines; and

3. they are consistent with all relevant adopted state, local, and regional plans.

C. Reserved.

D. To the maximum extent practicable wetland areas shall not be drained or filled. Any approved drain or fill project shall be designed and constructed using best practical techniques to minimize present and future property damage and adverse environmental impacts.

E. Coastal water dependent uses shall be given special consideration in permitting because of their reduced choice of alternatives.

F. Areas modified by surface alteration activities shall, to the maximum extent practicable, be revegetated, refilled, cleaned, and restored to their predevelopment condition upon termination of the use.

G. Site clearing shall to the maximum extent practicable be limited to those areas immediately required for physical development.

H. Surface alterations shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Alterations in wildlife preserves and management areas shall be conducted in strict accord with the requirements of the wildlife management body.

I. Surface alterations which have high adverse impacts on natural functions shall not occur, to the maximum extent practicable, on barrier islands and beaches, isolated cheniers, isolated natural ridges or levees, or in wildlife and aquatic species breeding or spawning areas, or in important migratory routes.

J. The creation of low dissolved oxygen conditions in the water or traps for heavy metals shall be avoided to the maximum extent practicable.

K. Surface mining and shell dredging shall be carried out utilizing the best practical techniques to minimize adverse environmental impacts.

L. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

M. Surface alteration sites and facilities shall be designed, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment and minimize other adverse impacts.

N. To the maximum extent practicable only material that is free of contaminants and compatible with the environmental setting shall be used as fill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§713. Guidelines for Hydrologic and Sediment Transport Modifications

A. The controlled diversion of sediment-laden waters to initiate new cycles of marsh building and sediment nourishment shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

B. Sediment deposition systems may be used to offset land loss, to create or restore wetland areas or enhance building characteristics of a development site. Such systems shall only be utilized as part of an approved plan. Sediment from these systems shall only be discharged in the area where the proposed use is to be accomplished.

C. Undesirable deposition of sediments in sensitive habitat or navigation areas shall be avoided through the use of the best preventive techniques.

D. The diversion of freshwater through siphons and controlled conduits and channels, and overland flow to offset saltwater intrusion and to introduce nutrients into wetlands shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

E. Water or marsh management plans shall result in an overall benefit to the productivity of the area.

F. Water control structures shall be assessed separately based on their individual merits and impacts and in relation to their overall water or marsh management plan of which they are a part.

G. Weirs and similar water control structures shall be designed and built using the best practical techniques to prevent "cut arounds," permit tidal exchange in tidal areas, and minimize obstruction of the migration of aquatic organisms.

H. Impoundments which prevent normal tidal exchange and/or the migration of aquatic organisms shall not be constructed in brackish and saline areas to the maximum extent practicable.

I. Withdrawal of surface and ground water shall not result in saltwater intrusion or land subsidence to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§715. Guidelines for Disposal of Wastes

A. The location and operation of waste storage, treatment, and disposal facilities shall be avoided in wetlands to the maximum extent practicable, and best practical techniques shall be used to minimize adverse impacts which may result from such use.

B. The generation, transportation, treatment, storage, and disposal of hazardous wastes shall be pursuant to the substantive requirements of the Department of Environmental Quality adopted pursuant to the provisions of R.S. 30:217, et seq.; as amended and approved pursuant to the Resource Conservation and Recovery Act of 1976 P.L. 94-580, as amended, and of the Office of Conservation for injection below surface.

C. Waste facilities located in wetlands shall be designed and built to withstand all expectable adverse conditions without releasing pollutants.

D. Waste facilities shall be designed and constructed using best practical techniques to prevent leaching, control leachate production, and prevent the movement of leachate away from the facility.

E. The use of overland flow systems for nontoxic, biodegradable wastes, and the use of sump lagoons and reservoirs utilizing aquatic vegetation to remove pollutants and nutrients shall be encouraged.

F. All waste disposal sites shall be marked and, to the maximum extent practicable, all components of waste shall be identified.

G. Waste facilities in wetlands with identifiable pollution problems that are not feasible and practical to correct shall be closed and either removed or sealed, and shall be properly revegetated using the best practical techniques.

H. Waste shall be disposed of only at approved disposal sites.

I. Radioactive wastes shall not be temporarily or permanently disposed of in the coastal zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§717. Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters

A. Upland and upstream water management programs which affect coastal waters and wetlands shall be designed and constructed to preserve or enhance existing water quality, volume, and rate of flow to the maximum extent practicable.

B. Runoff from developed areas shall to the maximum extent practicable be managed to simulate natural water patterns, quantity, quality, and rate of flow.

C. Runoff and erosion from agricultural lands shall be minimized through the best practical techniques.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§719. Guidelines for Oil, Gas, and Other Mineral Activities

A. Geophysical surveying shall utilize the best practical techniques to minimize disturbance or damage to wetlands, fish and wildlife, and other coastal resources.

B. To the maximum extent practicable, the number of mineral exploration and production sites in wetland areas requiring floatation access shall be held to the minimum number, consistent with good recovery and conservation practices and the need for energy development, by directional drilling, multiple use of existing access canals, and other practical techniques.

C. Exploration, production, and refining activities shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Mineral operations in wildlife preserves and management areas shall be conducted in strict accordance with the requirements of the wildlife management body.

D. Mineral exploration and production facilities shall be to the maximum extent practicable designed, constructed, and maintained in such a manner to maintain natural water flow regimes, avoid blocking surface drainage, and avoid erosion.

E. Access routes to mineral exploration, production, and refining sites shall be designed and aligned so as to avoid adverse impacts on critical wildlife and vegetation areas to the maximum extent practicable.

F. Drilling and production sites shall be prepared, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment.

G. All drilling activities, supplies, and equipment shall be kept on barges, on drilling rigs, within ring levees, or on the well site.

H. Drilling ring levees shall to the maximum extent practicable be replaced with small production levees or removed entirely.

I. All drilling and production equipment, structures, and storage facilities shall be designed and constructed utilizing best practical techniques to withstand all expectable adverse conditions without releasing pollutants.

J. Mineral exploration, production, and refining facilities shall be designed and constructed using best practical techniques to minimize adverse environmental impacts.

K. Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations.

L. The use of dispersants, emulsifiers, and other similar chemical agents on oil spills is prohibited without the prior approval of the Coast Guard or Environmental Protection Agency on-scene coordinator, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan.

M. Mineral exploration and production sites shall be cleared, revegetated, detoxified, and otherwise restored as near as practicable to their original condition upon termination of operations to the maximum extent practicable.

N. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Subchapter C. Coastal Use Permits and Mitigation

§723. Rules and Procedures for Coastal Use Permits

A. General

1. Coastal Use Permits. This regulation provides the requirements and procedures for the issuance, denial, renewal, modification, suspension, and revocation of coastal use permits and general coastal use permits.

2. Permit Requirement. No use of state or local concern shall be commenced or carried out in the coastal zone without a valid coastal use permit or in-lieu permit unless the activity is exempted from permitting by the provisions of the SLCRMA or by Subsection B of this Section. The following shall be considered as uses of state or local concern subject to the requirement of this Paragraph:

a. dredging or filling and discharges of dredged or fill material;

b. levee siting, construction, operation, and maintenance;

c. hurricane and flood protection facilities, including the siting, construction, operation, and maintenance of such facilities;

d. urban developments, including the siting, construction or operation of residential, commercial, industrial, and governmental structures and transportation facilities;

e. energy development activities, including any siting, construction, or operation of generating, processing and transmission facilities, pipeline facilities, and

exploration for and production of oil, natural gas, and geothermal energy;

f. mining activities, including surface, subsurface, and underground mining, sand or gravel mining, and shell dredging;

g. wastewater discharge, including point and nonpoint sources;

h. surface water control or consumption, including marsh management projects;

i. shoreline modification projects and harbor structures;

j. waste disposal activities;

k. recreational developments, including siting, construction and operation of public and private recreational facilities and marinas;

l. industrial development, including siting, construction, or operation of such facilities;

m. any other activities or projects that would require a permit or other form of consent or authorization from the U.S. Army Corps of Engineers, the Environmental Protection Agency or the Louisiana Department of Natural Resources (see page 83 Item 13 of the Louisiana Coastal Resources Program Final Environmental Impact Statement);

n. activities which impact barrier islands, salt domes, cheniers, and beaches;

o. drainage projects;

3. In-Lieu Permits. Coastal use permits shall not be required for the location, drilling, exploration and production of oil, gas, sulphur and other minerals subject to regulation by the Office of Conservation of the Department of Natural Resources as of January 1, 1979. The parameters and procedures of the in-lieu permit process are as provided for under existing Memorandum of Understanding between the Coastal Management Section and the Office of Conservation and the rules and procedures of the Office of Conservation.

B. Activities Not Requiring Permits

1. General

a. The following activities normally do not have direct and significant impacts on coastal waters; hence, a coastal use permit is not required, except as set forth in the following clauses:

i. agricultural, forestry, and aquaculture activities on lands consistently used in the past for such activities;

ii. hunting, fishing, trapping, and the preservation of scenic historic, and scientific areas and wildlife preserves;

iii. normal maintenance or repair of existing structures including emergency repairs of damage caused by accident, fire, or the elements;

iv. construction of a residence or camp;

v. construction and modification of navigational aids such as channel markers and anchor buoys;

vi. activities which do not have a direct and significant impact on coastal waters.

b. Uses and activities within the special area established by R.S. 49:214.29(c) which have been permitted by the Offshore Terminal Authority in keeping with its environmental protection plan shall not require a coastal use permit.

2. Activities on Lands 5 Feet or More above Sea Level or within Fastlands

a. Activities occurring wholly on lands 5 feet or more above sea level or within fastlands do not normally have direct and significant impacts on coastal waters. Consequently, a coastal use permit for such uses generally need not be applied for.

b. However, if a proposed activity exempted from permitting in Subparagraph a, above, will result in discharges into coastal waters, or significantly change existing water flow into coastal waters, then the person proposing the activity shall notify the secretary and provide such information regarding the proposed activity as may be required by the secretary in deciding whether the activity is a use subject to a coastal permit.

c. Should it be found that a particular activity exempted by Subparagraph a, above, may have a direct and significant impact on coastal waters, the department may conduct such investigation as may be appropriate to ascertain the facts and may require the persons conducting such activity to provide appropriate factual information regarding the activity so that a determination may be made as to whether the activity is a use subject to a permit.

d. The secretary shall determine whether a coastal use permit is required for a particular activity. A coastal use permit will be required only for those elements of the activity which have direct and significant impacts on coastal waters.

e. The exemption described in this Section shall not refer to activities occurring on cheniers, salt domes, barrier islands, beaches, and similar isolated, raised land forms in the coastal zone. It does refer to natural ridges and levees.

3. Emergency Uses

a. Coastal use permits are not required in advance for conducting uses necessary to correct emergency situations.

i. Emergency situations are those brought about by natural or man-made causes, such as storms, floods, fires, wrecks, explosions, spills, which would result in hazard to life, loss of property, or damage to the environment if immediate corrective action were not taken.

ii. This exemption applies only to those corrective actions which are immediately required for the protection of lives, property, or the environment necessitated by the emergency situation.

b. Prior to undertaking such emergency uses, or as soon as possible thereafter, the person carrying out the use shall notify the secretary and the local government, if the use is conducted in a parish with an approved local program, and give a brief description of the emergency use and the necessity for carrying it out without a coastal use permit.

c. As soon as possible after the emergency situation arises, any person who has conducted an emergency use shall report on the emergency use to the approved local program or to the administrator. A determination shall be made as to whether the emergency use will continue to have direct and significant impacts on coastal waters. If so, the user shall apply for an after-the-fact permit. The removal of any structure or works occasioned by the emergency and the restoration of the condition existing prior to the emergency use may be ordered if the permit is denied in whole or in part.

4. Normal Maintenance and Repair

a. Normal repairs and the rehabilitation, replacement, or maintenance of existing structures shall not require a coastal use permit provided that:

i. the structure or work was lawfully in existence, currently serviceable, and in active use during the year preceding the repair, replacement or maintenance; and

ii. the repair or maintenance does not result in an encroachment into a wetland area greater than that of the previous structure or work; and

iii. the repair or maintenance does not involve dredge or fill activities; and

iv. the repair or maintenance does not result in a structure or facility that is significantly different in magnitude or function from the original.

b. This exemption shall not apply to the repair or maintenance of any structure or facility built or maintained in violation of the coastal management program.

c. Coastal use permits will normally authorize periodic maintenance including maintenance dredging. All maintenance activities authorized by coastal use permits shall be conducted pursuant to the conditions established for that permit. Where maintenance is performed which is not described in an applicable coastal use permit, it shall conform to this Section.

5. Construction of a Residence or Camp

a. The construction of a residence or a camp shall not require a coastal use permit provided that:

i. the terms shall refer solely to structures used for noncommercial and nonprofit purposes and which are commonly referred to as "single family" and not multiple family dwellings;

ii. the terms shall refer solely to the construction of one such structure by or for the owner of the land for the owner's use and not to practices involving the building of more than one such structure as in subdividing, tract development, speculative building, or recreational community development.

b. The exemption shall apply only to the construction of the structure and appurtenances such as septic fields, outbuildings, walk-ways, gazebos, small wharves, landings, boathouses, private driveways, and similar works, but not to any bulkheading or any dredging or filling activity except for small amounts of fill necessary for the structure itself and for the installation and maintenance of septic or sewerage facilities.

6. Navigational Aids

a. The construction and modification of navigational aids shall not require a coastal use permit.

b. The term shall include channel markers, buoys, marker piles, dolphins, piling, pile clusters, etc.; provided that the exemption does not apply to associated dredge or fill uses or the construction of mooring structures, advertising signs, platforms, or similar structures associated with such facilities. All navigational aids constructed pursuant to this section shall conform to United State Coast Guard standards and requirements.

7. Agricultural, Forestry and Aquacultural Activities

a. Agricultural, forestry and aquacultural activities on lands consistently used in the past for such activities shall not require a coastal use permit provided that:

i. the activity is located on lands or in waters which have been used on an ongoing basis for such purposes, consistent with normal practices, prior to the effective date of SLCRMA (Act 361 of 1978);

ii. the activity does not require a permit from the U.S. Army Corps of Engineers and meets federal requirements for such exempted activities; and

iii. the activity is not intended to, nor will it result in, changing the agricultural, forestry, or aquacultural use for which the land has been consistently used for in the past to another use.

b. The exemption includes but is not limited to normal agricultural, forestry, and aquacultural activities such as:

i. plowing;

ii. seeding;

iii. grazing;

iv. cultivating;

v. insect control;

vi. fence building and repair;

vii. thinning;

viii. harvesting for the production of food, fiber and forest products;

ix. maintenance and drainage of existing farm, stock, or fish ponds;

x. digging of small drainage ditches; or

xi. maintenance of existing drainage ditches and farm or forest roads carried out in accordance with good management practices.

8. Blanket Exemption. No use or activity shall require a coastal use permit if:

a. the use or activity was lawfully commenced or established prior to the implementation of the coastal use permit process;

b. the secretary determines that it does not have a direct or significant impact on coastal waters; or

c. the secretary determines one is not required pursuant to §723.G of these rules.

C. Permit Application, Issuance, and Denial

1. General Requirements

a. Any applicant for a coastal use permit shall file a complete application with the state, or at his option, in areas subject to an approved local coastal management program, with the local government. The department will provide the application forms and instructions, including example plats and interpretive assistance, to any interested party. The staffs of the coastal management section and approved local programs shall be available for consultation prior to submission of an application and such consultation is strongly recommended. Application forms may be periodically revised to obtain all information necessary for review of the proposed project.

b. Separate applications shall be made for unrelated projects or projects involving noncontiguous parcels of property. Joint applications may be made in cases of related construction involving contiguous parcels of property.

c. Applicants for coastal use permits for uses of state concern shall include with their application filed with the state a certification that a copy of the application was forwarded by certified mail or hand delivered to the affected local parish(es) with an approved coastal management program.

d. Applicants for coastal use permits for uses of state concern, who elect to submit their application to the affected local parish(es) with an approved local coastal management program, shall include with their application a certification that a copy of the application was forwarded by certified mail or hand delivered to the state.

2. Content of Application. The application submitted shall contain the same information required for a permit from the U.S. Army Corps of Engineers and such additional information as the secretary determines to be reasonably necessary for proper evaluation of an application.

3. Fee Schedule

a. Effective May 1, 2002, the fee schedule of Coastal Use Permits of state concern will be divided into the two categories of residential uses and nonresidential uses.

b. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be $20 for each application and $20 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve fewer than 125 cubic yards of dredging or fill volume shall not be assessed additional fees.

(b). Proposed projects which involve 125 cubic yards of dredging and/or filling but less than 50,000 cubic yards shall be assessed at the rate of $0.04 per cubic yard.

(c). Proposed projects which involve 50,000 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of $2,000.

c. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the non-residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be $100 for each application and $100 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve more than 0 and fewer than 500 cubic yards of dredging or fill volume shall be assessed a fee of $25.

(b). Proposed projects which involve 501 cubic yards of dredging and/or filling but less than 100,001 cubic yards shall be assessed at the rate of $0.05 per cubic yard.

(c). Proposed projects which involve 100,001 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of $5,000.

d. If the appropriate fees are not included along with the coastal use permit application, the application will be considered incomplete, and returned to the applicant. The application fee and additional fees, if any, should be paid separately.

e. A coastal use permit application which has been returned to the applicant by the Coastal Management Division or withdrawn by the applicant and is subsequently resubmitted shall be subject to an additional processing fee which will consist of an application fee and a permit fee if the application has undergone substantial revisions, pursuant to Subparagraph D.1.a of this Section.

f. Nothing contained in Subparagraphs 3.a-e shall affect the right of local government and parishes with

approved programs to assess fees for processing and evaluating coastal use permit applications.

g. In addition to the fees identified at §723.C.3.a, the following fees related to compensatory mitigation shall be charged when appropriate pursuant to §724:

i. compensatory mitigation processing fee (§724.D);

ii. mitigation bank initial evaluation fee, mitigation bank habitat evaluation fee, mitigation bank establishment fee, and mitigation bank periodic review fee (§724.F.3);

iii. advanced mitigation project initial evaluation fee, advanced mitigation project establishment fee, advanced mitigation post-implementation habitat evaluation fee, advanced mitigation periodic review fee (§724.G.5);

iv. compensatory mitigation variance request fee (§724.K.2.h).

4. Processing the Application

a. When an apparently complete application for a permit is received, the permitting body shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it.

b. Application processing will begin when an application that is apparently complete is accepted by the permitting body.

c. Within two working days of receipt of an apparently complete application by a local government with an approved program, a copy of the application and all attachments and the local government's decision as to whether the use is one of state or local concern shall be sent to the secretary.

d. Public notice as described in Paragraph 5 below, will be issued within 10 days of receipt of an apparently complete application by the secretary.

e. The permitting body shall evaluate the proposed application pursuant to Paragraph 6 below, to determine the need for a public hearing.

f. The permitting body, pursuant to Paragraph 8 below, shall either send a draft permit to the applicant for acceptance and signature or send notice of denial to the applicant within 30 days of the giving of public notice or within 15 days after the closing of the record of a public hearing, if held, whichever is later.

g. Public notice of permit decisions shall be given pursuant to Paragraph 5.a.ii below.

5. Public Notice and Consideration of Public Comment

a. Public notice of the receipt of all apparently complete applications for coastal use permits shall be given by:

i. mailing a brief description of the application along with a statement indicating where a copy of the application may be inspected to any person who has filed a request to be notified of such permit applications and to all affected governmental bodies;

ii. by posting or causing to be posted a copy of the application at the location of the proposed use;

iii. by sending notice of the application to all appropriate news media in the parish or parishes in which the use would be located; and

iv. by causing the publication of notice of the application once in the official journal of the state; or for uses of local concern in parishes with approved local programs, by causing the publication of notice of the application once in the official journal of the parish.

b. Notice shall be considered given upon publication in the official journal.

c. The notice shall set forth that any comments on the proposed development shall be submitted to the permitting body within 25 days from the date of official journal publication of the notice.

d. A copy of the application will be sent to any person requesting it upon payment of a reasonable fee to cover costs of copying, handling, and mailing, except that information of a confidential or proprietary nature shall be withheld. In the event that attachments to the application are not readily reproducible, they shall be available for inspection at the permitting office.

e. The permitting body shall consider comments received in response to the public notice in its subsequent actions on the permit application. Comments received will be made a part of the official file on the application. If comments received relate to matters within the special expertise of another governmental body, the permitting body may seek advice of that agency. If necessary, the applicant will be given the opportunity to furnish his proposed resolution or rebuttal to all objections from government agencies and other substantive adverse comments before a final decision is made on the application.

f. The secretary shall issue monthly a list of permits issued or denied during the previous month. This list will be distributed to all persons who receive the public notices.

6. Public Hearings on Permit Applications

a. A public hearing may be held in connection with the consideration of an application for a new permit and when it is proposed that an existing permit be modified or revoked.

b. Any person may request in writing within the comment period specified in the public notice that a public hearing be held to consider material matters at issue in a permit application. Upon receipt of any such request, the permitting body shall determine whether the issues raised are substantial, and there is a valid public interest to be served by holding a public hearing.

c. Public hearing(s) are appropriate when there is significant public opposition to a proposed use, or there have been requests from legislators or from local governments or other local authorities, or in controversial cases involving significant economic, social, or environmental issues. The

secretary or local government with an approved program has the discretion to require hearings in any particular case.

d. If the determination is made to hold a public hearing, the permitting body shall promptly notify the applicant, set a time and place for the hearing, and give public notice.

e. If a request for a public hearing has been received, and the decision is made that no hearing will be held, public notice of the decision shall be given.

7. Additional Information

a. If an application is found to be incomplete or inaccurate after processing has begun or if it is determined that additional information from the applicant is necessary to assess the application adequately, processing will be stopped pending receipt of the necessary changes or information from the applicant and the processing periods provided for in Paragraph 4.d and f will be interrupted. Upon receipt of the required changes or information, a new processing period will begin.

b. If the applicant fails to respond within 30 days to any request or inquiry of the permitting body, the permitting body may advise the applicant that his application will be considered as having been withdrawn unless and until the applicant responds within 15 days of the date of the letter.

8. Decisions on Permits

a. The permitting body will determine whether or not the permit should be issued. Permits shall be issued only for those uses which are consistent with the guidelines, the state program, and affected approved local programs. The secretary shall not consider the use to be consistent with the state program unless the permit includes condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to the use. Permit decisions will be made only after a full and fair consideration of all information before the permitting body, and shall represent an appropriate balancing of social, environmental, and economic factors. The permitting body shall prepare a short and clear statement explaining the basis for its decision on all applications. This statement shall include the permitting body's conclusions on the conformity of the proposed use with the guidelines, the state program and approved local programs. The statement shall be dated, signed, and included in the record prior to final action on the application.

b. If the staff of the permitting body recommends issuance of the permit, the permitting body will forward two copies of the proposed permit to the applicant. A letter of transmittal to the applicant shall include the recommendations to the secretary and the anticipated date on which the application shall be presented to him for action. Unless good cause is then presented in support of changes to the permit and the conditions therein, the permit will be presented to the secretary for action in such form.

c. Final action on the permit application is the signature of the issuing official on the permit or the mailing of the letter notifying the applicant of the denial.

9. Conditions of Permit

a. By accepting the permit, the applicant agrees to:

i. carry out or perform the use in accordance with the plans and specifications approved by the permitting body;

ii. comply with any permit conditions imposed by the permitting body;

iii. adjust, alter, or remove any structure or other physical evidence of the permitted use if, in the opinion of the permitting body, it proves to be beyond the scope of the use as approved or is abandoned;

iv. provide, if required by the permitting body, an acceptable surety bond in an appropriate amount to ensure adjustment, alteration, or removal should the permitting body determine it necessary;

v. hold and save the state of Louisiana, the local government, the department, and their officers and employees harmless from any damage to persons or property which might result from the work, activity, or structure permitted;

vi. certify that any permitted construction has been completed in an acceptable and satisfactory manner and in accordance with the plans and specifications approved by the permitting body. The permitting body may, when appropriate, require such certification be given by a registered professional engineer.

b. The permitting body shall place such other conditions on the permit as are appropriate to ensure compliance with the coastal management program.

c. Permitted uses subject to this Part shall be of two types, continuing and noncontinuing uses, which are defined below as follows.

i. Continuing uses are activities which by nature are carried out on an uninterrupted basis, examples include shell dredging and surface mining activities, projects involving maintenance dredging of existing waterways, and maintenance and repair of existing levees.

ii. Noncontinuing uses are activities which by nature are done on a one-time basis, examples include dredging access canals for oil and gas well drilling, implementing an approved land use alteration plan, and constructing new port or marina facilities.

d. The term of issuance of permits shall be as follows.

i. The term to initiate a coastal use permit for a noncontinuing use shall be two years from the date of issuance, and the term to complete the use shall be five years from the date of issuance. The permit term for initiation may be extended pursuant to Subsection D for an additional two years. The permit term for completion may not be extended.

ii. The term of a coastal use permit for a continuing use shall be five years from the date of issuance. The permit term may not be extended.

D. Modification, Suspension or Revocation of Permits

1. Modifications

a. The terms and conditions of a permit may be modified to allow changes in the permitted use, in the plans and specifications for that use, in the methods by which the use is being implemented, or to assure that the permitted use will be in conformity with the coastal management program. Changes which would significantly increase the impacts of a permitted activity shall be processed as new applications for permits pursuant to Subsection C, not as a modification.

b. A permit may be modified upon request of the permittee:

i. if mutual agreement can be reached on a modification, written notice of the modification will be given to the permittee;

ii. if mutual agreement cannot be reached, a permittee's request for a modification shall be considered denied.

2. Suspensions

a. The permitting body may suspend a permit upon a finding that:

i. the permittee has failed or refuses to comply with the terms and conditions of the permit or any modifications thereof; or

ii. the permittee has submitted false or incomplete information in his application or otherwise; or

iii. the permittee has failed or refused to comply with any lawful order or request of the permitting body or the secretary.

b. The permitting body shall notify the permittee in writing that the permit has been suspended and the reasons therefor and order the permittee to cease immediately all previously authorized activities. The notice shall also advise the permittee that he will be given, upon request made within 10 days of receipt of the notice, an opportunity to respond to the reasons given for the suspension.

c. After consideration of the permittee's response, or, if none, within 30 days after issuance of the notice, the permitting body shall take action to reinstate, modify or revoke the permit and shall notify the permittee of the action taken.

3. Revocation. If, after compliance with the suspension procedures in Subsection B, above, the permitting body determines that revocation or modification of the permit is warranted, written notice of the revocation or modification shall be given to the permittee.

4. Enforcement. If the permittee fails to comply with a cease and desist order or the suspension or revocation of a permit, the permitting body shall seek appropriate civil and criminal relief as provided by §214.36 of the SLCRMA.

5. Extension

a. The secretary shall review extension requests subject to this part on a case-by-case basis. The secretary shall determine, based upon the merits of the request and upon the compliance of the permitted activity with the regulations and policies existing at the time of the request, whether extension may be considered.

b. If the secretary determines that extension may be considered, the Coastal Management Division shall cause to be issued for public comment, for a period of 25 days, a copy of the original permit with its associated drawings in accordance with Subparagraph h below. The secretary shall consider public comments received during this period prior to the final decision on whether to allow permit extension. The sole reason for not allowing extension based upon public comment shall be that there has been a change in the conditions of the area affected by the permit since the permit was originally issued.

c. If the secretary determines that a permit should not be extended, the permittee shall be notified and, provided that the permittee desires a new permit, the use shall be subject to processing as a new permit application pursuant to the procedures set forth in Subsection C. A decision of the secretary not to allow extension of a permit shall not be subject to appeal. A decision of the secretary to allow extension shall be subject to appeal only on the grounds that the proposed activity should be treated as a new application pursuant to Subsection C rather than be considered for extension.

d. The permit terms of noncontinuing uses may be extended once for an additional two years, except that an extension may be granted only for the term to initiate work and not for the term to complete work as described in Clause C.9.c.i above.

e. All coastal use permits in effect on the date these rules are adopted are eligible for extension provided that all requirements in Subparagraph f below are met.

f. Extension requests shall be in the form of a written letter which shall refer to the original coastal use permit application number and specifically state that a permit extension is desired. An extension request fee in the amount of $80 must be included with such a request, and the request must be received by the Coastal Management Division no sooner than 180 days and no later than 60 days prior to the expiration of the permit in question. Requests received later than 60 days prior to the expiration date of the permit shall not be eligible for consideration for extension.

g. Extension requests involving modifications to a permitted activity which would result in greater impacts to the environment than previously permitted will be considered as new applications rather than as extension requests. Extension requests involving modifications to a permitted activity which would result in identical or lesser

impacts to the environment than previously permitted may be considered as extension requests, and must, in addition to the requirements in Subparagraph f above, contain adequate information (such as drawings, maps, etc.) to support and explain the proposed modifications.

h. The Coastal Management Division shall issue notice of the extension request to all members of the Joint Public Notice mailing list, and shall publish notice that the extension request has been granted or denied in the Bi-weekly Status Report that is published in the state journal as well as mailed to Joint Public Notice mailing recipients.

E. General Permits

1. General

a. The administrator may, after compliance with the procedures set forth in Paragraphs C.4 and 5, issue general permits for certain clearly described categories of uses requiring coastal use permits. After a general permit has been issued, individual uses falling within those categories will not require full individual permit processing unless the administrator determines, on a case-by-cases basis, that the public interest requires full review.

b. General permits may be issued only for those uses that are substantially similar in nature, that cause only minimal adverse impacts when performed separately, that will have only minimal adverse cumulative impacts and that otherwise do not impair the fulfillment of the objectives and policies of the coastal management program.

c. When an individual use is authorized under a general permit, the authorization shall include condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to the individual use.

d. In addition to the fees identified at §723.C.3.a, any person seeking authorization under a general permit shall be charged a compensatory mitigation processing fee, if applicable, pursuant to §724.D.

2. Reporting

a. Each person desiring to commence work on a use subject to a general permit must give notice to the secretary and receive written authorization prior to commencing work. Such authorization shall be issued within 30 days of receipt of the notice.

b. Such notice shall include:

i. the name and address of the person conducting the use;

ii. such descriptive material, maps, and plans as may be required by the secretary for that general permit.

3. Conditions of General Permits

a. The secretary shall prescribe such conditions for each general permit as may be appropriate.

b. A general permit may be revoked if the secretary determines that such revocation is in the public interest and consistent with the coastal management program.

4. Local General Permits. A local government with an approved local program may issue general permits for uses of local concern under its jurisdiction pursuant to the above procedures. Such general permits shall be subject to approval by the secretary.

F. Determinations as to Whether Uses Are of State Concern or Local Concern

1. Filing of Applications with a Local Government with an Approved Local Coastal Program

a. The local government shall make the initial determination as to whether the use is one of state concern or local concern on all applications filed with the local government. This determination shall be based on the criteria set forth in Paragraph 3 below.

b. The determination and a brief explanation of the rationale behind the determination shall be forwarded to the secretary within two working days of receipt of the apparently complete application, pursuant to Subparagraph C.4.d.

c. The secretary shall review the decision and rationale and shall let it stand or reverse it. If the secretary reverses the local decision, notice, including a brief explanation of the rationale for the reversal shall be sent to the local government within two working days of receipt of the application from the local government.

d. The appropriate permitting body for the use, as determined by the secretary, shall thereafter be responsible for the permit review process.

2. Filing of Application with the Secretary. Within two working days of the filing of an apparently complete application with the secretary, the secretary shall make a determination as to whether the use is one of state concern or local concern based on the criteria set forth in Paragraph 3 below. Notice shall be given to affected local programs of the determination whether the use is a use of state or local concern. The secretary shall give full consideration to local program comments or objections to any such determination in making future determinations.

3. Criteria for Determination

a. The following factors shall be used in making a determination as to whether a use is of state or local concern:

i. the specific terms of the uses as classified in the Act;

ii. the relationship of a proposed use to a particular use classified in the Act;

iii. if a use is not predominately classified as either state or local by the Act or the use overlaps the two classifications, it shall be of local concern unless it:

(a). is being carried out with state or federal funds;

(b). involves the use of or has significant impacts on state or federal lands, water bottoms, or works;

(c). is mineral or energy development, production or transportation related;

(d). involves the use of, or has significant impacts, on barrier islands or beaches or any other shoreline which forms part of the baseline for Louisiana's offshore jurisdiction;

(e). will result in major changes in the quantity or quality of water flow and circulation or in salinity or sediment transport regimes; or

(f). has significant interparish or interstate impacts.

b. For purposes of this Paragraph, the term *state* shall mean the state of Louisiana, its agencies, and political subdivisions; but not local governments, their agencies and political subdivisions.

G. Determination as to Whether a Coastal Use Permit Is Required

1. Request by Applicant

a. Any person who proposes to conduct an activity may submit a request in writing to the secretary for a formal finding as to whether the proposed activity is a use of state or local concern within the coastal zone subject to the coastal use permitting program. The person making the request shall submit with the request a complete application for a coastal use permit and shall provide such additional information requested by the secretary as may be appropriate.

b. The requesting party must set forth sufficient facts to support a finding that the proposed activity either:

i. is exempt from coastal use permitting; or

ii. does not have a direct and significant impact on coastal waters; or

iii. is outside the coastal zone boundary.

c. Within 30 days of receipt of the request and the complete application, the requestor shall be sent notice of the decision on the request and public notice of the decision shall be given.

2. Finding without Request

a. In reviewing a permit application for which no request has been submitted, the secretary may find after full consideration of the application, likely impacts of the proposed use, comments received, and applicable rules, regulations and guidelines, that a coastal use permit is not required. If he finds that no permit is required, the secretary shall notify the applicant and give public notice.

b. A local government with an approved program may request that the secretary review an application for a use of local concern and make a determination as to whether a coastal use permit is required, pursuant to the procedures provided for in Paragraph 2.a above. The secretary shall notify the local government of his decision.

3. Decisions

a. Only the secretary may determine that a coastal use permit is not required. A permit shall not be required if the proposed use or activity will not occur within the boundary of the coastal zone, does not have a direct and significant impact on coastal waters, or is exempt from permitting by Subsection C of these rules or by §214.31 (B) or (C), §214.32 (A) or §214.34 of the SLCRMA.

b. The notice sent to the requestor or applicant shall include a short and plain statement of the basis for the decision. Public notice of the decision shall be given pursuant to Subparagraph C.5.f of these rules.

4. Actions after Decision

a. If the determination is that a coastal use permit is required, processing of the application may be commenced or continued pursuant to Subsection C of these rules.

b. If the determination is that a coastal use permit is not required, the requestor or the applicant may proceed to carry out the activity. Provided that the secretary shall not be stopped from subsequently requiring a permit or issuing cease and desist orders if it is found that the activity as implemented is significantly different from that shown on the request or application, does in fact have a direct or significant impact on coastal waters, or otherwise requires a coastal use permit. Other civil or criminal sanctions shall not be available in the absence of fraud, ill practices, deliberate misrepresentation, or failure to comply with any cease and desist or other lawful order of the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21 - 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 28:516 (March 2002).

§724. Rules and Procedures for Mitigation

A. General. This Section provides general procedures for avoiding and minimizing adverse impacts identified in the permit review process, restoring impacted sites when appropriate, quantifying anticipated unavoidable wetland ecological value losses, requiring appropriate and sufficient compensatory mitigation, establishing mitigation banks, establishing advanced mitigation projects, and evaluating and processing requests for variances from the compensatory mitigation requirement.

B. Avoidance, Minimization, and Restoration of, and Compensation for, Potential Wetland Ecological Value Losses

1. The secretary shall not grant a coastal use permit or issue a general permit authorization for an individual activity unless the permit/authorization is conditioned to include:

a. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to avoid and minimize those adverse impacts identified during the permit review process; and

b. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to restore impacted sites when appropriate; and

c. a requirement for compensatory mitigation to offset any net loss of wetland ecological value that is anticipated to occur despite efforts to avoid, minimize, and restore permitted/authorized impacts (i.e., unavoidable net loss of wetland ecological value), unless a variance is granted pursuant to §724.K.

2. If the secretary determines that a proposed activity would comply with §§701-719 and would not result in a net loss of wetland ecological values, the secretary shall not require compensatory mitigation.

3. When a proposed oil and gas exploration site would impact vegetated wetlands, the determination regarding the avoidance and minimization of adverse impacts and impact site restoration for the proposed exploration activity and its associated production and transmission activities shall be made through the geological review procedure.

4. In addition to the requirement contained in §724.B.3, the secretary may utilize the geologic review procedure, when requested by the Louisiana Department of Wildlife and Fisheries (LDWF), to render the determination regarding avoidance and minimization of adverse impacts and impact restoration, for proposed oil and gas exploration activities and its associated production and transmission activities which would:

a. occur within 1/4 mile of an oyster seed ground, oyster seed reservation, or a public oyster harvesting area;

b. impact other oyster or other shell reef(s);

c. occur within the boundaries of a wildlife refuge or wildlife management area owned or managed by LDWF; or

d. occur within an area designated as a natural and scenic river in accordance with the provisions of R.S. 56:1840 et seq.

C. Quantification of Anticipated Net Gains and Unavoidable Net Losses of Ecological Value

1. When compensatory mitigation would be accomplished via the use of the Castex-Laterre Mitigation Bank or the Nature Conservancy's Pine Flatwood Mitigation Bank, net gains and unavoidable net losses of ecological value shall be quantified in accordance with the valuation and accounting procedures described in the respective memoranda of agreement.

2. Except as allowed in §724.C.1 and §724.H.3, anticipated net gains and unavoidable net losses of ecological value shall be quantified as cumulative habitat units (CHUs) or average annual habitat units (AAHUs), whichever is most appropriate for the given situation.

3. If CHUs are determined to be appropriate:

a. net gain or net loss of ecological value = (sum of CHUs produced in a future-with-project scenario) - (sum of CHUs produced in a future-without-project scenario);

b. CHUs for each time interval within the project years shall be calculated by the following formula and in general accordance with the U.S. Fish and Wildlife Service's Habitat Evaluation Procedure: CHUs = $(T_2 - T_1)$ □ {[$(A_1$ □ $HSI_1 + A_2$ □ $HSI_2) / 3] + [(A_2$ □ $HSI_1 + A_1$ □ $HSI_2) / 6]\}$, where T_1 = first year of time interval, T_2 = last year of time interval, A_1 = wetland acres at beginning of time interval, A_2 = wetland acres at end of time interval, HSI_1 = habitat suitability index at beginning of time interval, and HSI_2 = habitat suitability index at end of time interval.

4. If AAHUs are determined to be appropriate:

a. net gain or net loss of ecological value = (AAHUs produced in a future-with-project scenario) - (AAHUs produced in a future-without-project scenario);

b. AAHUs = (sum of CHUs for a given scenario) / (project years).

5. The quantification of "wetland acres," at selected times throughout the project years, shall be based on the following factors:

a. the vegetated wetland acreage depicted, in the accepted permit application, as being directly impacted by the proposed activity;

b. when determined to be appropriate by the secretary, vegetated wetland acreage of secondary impact; see definition of secondary impact in §700; and

c. the vegetated wetland acreage that would have been present at the activity site, at selected times throughout the project years, without implementation of the proposed activity, based on the best available, as determined by the secretary, vegetated wetland loss or gain data.

6. If:

a. the vegetated wetland acreage to be altered by the proposed activity is limited to the area depicted in the accepted permit application; and

b. the only anticipated variation in that acreage would be due to vegetated wetland loss or gain, an "adjusted acreage" can be calculated with the following formula and

utilized in lieu of calculating acreage at selected times throughout project years: Adjusted acres = {acres of direct impact - [acres of direct impact x annual land loss rate x (project years / 2)]}.

7. The secretary shall provide upon request, to any interested party, the source and resultant vegetated wetland loss or gain data which would be applied to a specific proposed activity.

8. "Habitat suitability indices" (HSI) shall be determined by applying:

a. for marsh habitats, the May 2, 1994, version of the Wetland Value Assessment Methodology Models, developed by the Coastal Wetland Planning, Protection, and Restoration Act (P.L. 101-646) Environmental Work Group; or

b. for bottomland hardwoods and fresh swamp, the January 10, 1994, version of "Habitat Assessment Models for Fresh Swamp and Bottomland Hardwoods Within the Louisiana Coastal Zone."

9. The secretary may adopt modifications to those models, provided that the resultant "habitat suitability index" values do not vary more than 15 percent from the above referenced versions. Modifications which cause greater than 15 percent variation in "habitat suitability index" values or adoption of alternative models or methodology may be undertaken only in accordance with provisions of R.S. 49:953. The amount of variation shall be determined by comparing the results of the models referenced above with the results of the modified models on a minimum of 10 sites for the appropriate habitat type(s).

D. Compensatory Mitigation Processing Fees

1. In addition to the fees identified at §723.C.3.a.i-ii, when the secretary determines that compensatory mitigation would be required pursuant to §724.B, a fee shall be charged for the evaluation, processing, and determination of compensatory mitigation requirements. The fee shall apply regardless of which compensatory mitigation option is selected and shall be in addition to any cost incurred to implement the required compensatory mitigation. The requested permit or general permit authorization for an individual activity shall not be issued until the secretary has received the compensatory mitigation processing fee. This fee shall be determined as follows.

a. Noncommercial activities which directly impact 1.00 acre or less of vegetated wetlands shall be assessed a compensatory mitigation processing fee of $50.

b. All other activities shall be assessed a compensatory mitigation processing fee according the following table.

Vegetated Wetland Acres Depicted as Directly Altered in Accepted Permit Application	Compensatory Mitigation Processing Fee
0 - 0.50	$ 150
0.51 - 1.00	$ 300
1.01 - 2.00	$ 600
2.01 - 3.00	$ 900
3.01 - 4.00	$ 1,200
4.01 - 5.00	$ 1,500
5.01 - 10.00	$ 2,250
10.01 - 15.00	$ 3,750
15.01 - 25.00	$ 6,000
25.01 - 100.00	$12,500
> 100.00	$15,000

2. Unless waived or reduced by the secretary, the compensatory mitigation processing fee shall apply even if the secretary grants a full variance to the compensatory mitigation requirement pursuant to §724.K.

E. Compensatory Mitigation Options

1. Compensatory mitigation shall be accomplished through one or more of the following compensatory mitigation options as approved by the secretary:

a. use or acquisition of an appropriate type and quantity of mitigation credits from a mitigation bank approved by the secretary, pursuant to §724.F;

b. use or acquisition of an appropriate type and quantity of advanced mitigation credits from an advanced mitigation project approved by the secretary, pursuant to §724.G;

c. implementation of an individual mitigation measure or measures to offset the unavoidable ecological value losses associated with the permitted activity, pursuant to §724.H;

d. monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund, pursuant to §724.I; and

e. "other" compensatory mitigation options determined to be appropriate by the secretary.

F. Mitigation Banks

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to establish wetland mitigation banks.

2. In determining the acceptability and appropriateness of establishing a mitigation bank, the secretary shall consider the following factors:

a. the potential mitigation bank operator's history of compliance with the guidelines and the state program over at least the preceding five years;

b. the mitigation bank operator's potential ability to operate and maintain the mitigation bank throughout the life of the bank (i.e., 20 years for marsh mitigation banks or 50 years for forested wetland mitigation banks);

c. the mitigation bank's potential to create, restore, protect, and/or enhance vegetated wetlands;

d. the mitigation bank's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;

e. the mitigation bank's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the bank; and

f. whether the proposed project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other effort designed to create, restore, protect, or enhance vegetated wetlands.

3. In addition to the fees identified at §723.C.3.a.i-ii, nonrefundable fees shall be charged for the initial evaluation, habitat evaluation, establishment, and periodic review of mitigation banks according to the following table.

Proposed Mitigation Bank Acreage	Informal Review	Initial Evaluation Fee	Habitat Evaluation Fee	Establishment Fee	Periodic Review Fee
0 - 100	$0	$ 75	$ 350	$ 75	$ 50
101 - 500	$0	$150	$ 700	$150	$100
501 - 1,000	$0	$225	$1,050	$225	$200
1,001 - 5,000	$0	$300	$1,400	$300	$300
> 5,000	$0	$375	$1,750	$375	$400

4. Proposals for the establishment of mitigation banks utilizing projects which have been permitted but not fully implemented or projects which would not require a permit shall be considered as follows.

a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential mitigation bank operators shall submit a written request for the secretary to consider designation of a mitigation bank; the following must be provided with the request:

i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;

ii. detailed drawings and project description unless such information is already on file with the department;

iii. a statement describing the extent to which the project has been implemented;

iv. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

v. the mitigation bank initial evaluation fee identified at §724.F.3.

c. The secretary shall review the request and within 20 days:

i. inform the potential operator of the request's completeness; and

ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential operator, in writing, of the additional information necessary to evaluate and process the request.

d. Within 30 days of the secretary's acceptance of the request as complete, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).

e. Within 90 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as a mitigation bank and:

i. if the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or

ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as a mitigation bank.

f. If a permit modification is necessary and is requested by the permittee in accordance with §723.D, the secretary shall process the request for modification in accordance with §723.D.

g. If and when the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.

h. Within 90 days of receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.

i. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.

j. The secretary shall render a final determination as to whether the project would be acceptable as a mitigation bank. If the project is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a memorandum of agreement (MOA) which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

5. Proposals for the establishment of mitigation banks utilizing projects which would require a permit shall be considered as follows.

a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential mitigation bank operators shall submit a standard permit application in accordance with §723.C. The following must be provided with the permit application:

i. a statement indicating the applicant's interest in establishing a mitigation bank;

ii. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

iii. the mitigation bank initial evaluation fee identified at §724.F.3.

c. The secretary shall review and process the permit application in accordance with §723.C, with added consideration that the project is proposed as a mitigation bank.

d. During the public notice period, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s), received in writing during the public notice period, or received in writing within 20 days of any such meeting(s).

e. The secretary shall render a preliminary determination as to whether the proposed activity would be acceptable as a mitigation bank, and:

i. if the proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or

ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the proposed activity preliminarily acceptable as a mitigation bank.

f. If and when a proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.

g. Following receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.

h. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.

i. The secretary shall render a final determination as to whether the proposed activity would be acceptable as a mitigation bank. If the proposed activity is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a MOA which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

6. The secretary shall determine the quantity, by habitat type, of mitigation credits potentially available for donation, sale, trade, or use from a proposed mitigation bank as follows.

a. Following receipt of the mitigation bank habitat evaluation fee (§724.F.3), the secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator to participate in the determination of potential mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting held to determine the type and quantity of potentially available mitigation credits.

b. The total quantity of potential mitigation credits (AAHUs or CHUs), by habitat type, attributable to the proposed mitigation bank shall be predicted by applying the methodology described in §724.C. The secretary shall consult with the state advisory agencies, the Corps, and federal advisory agencies to ensure that data gathering techniques of sufficient quality and intensity to allow replication of habitat response assessments throughout the mitigation bank life are employed.

c. For projects which have been partially implemented prior to designation as a mitigation bank, total potential mitigation bank credits would be limited to those attributed to features implemented after designation as a bank, except that if agreed to in advance by the secretary total potential credits could include those attributed to

features implemented between the time of the mitigation request being accepted by the secretary and bank designation. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of total potential mitigation credits.

d. Mitigation credits which are donated, sold, traded, or otherwise used for compensatory mitigation shall be referred to as debited credits.

7. Mechanisms for Ensuring Remediation, Operation, and Maintenance of Mitigation Bank Features

a. Three options are available to meet the requirements of §724.F.4.i and §724.F.5.h:

i. for any mitigation bank, mitigation credits could be made available to the mitigation bank operator incrementally over the life of the bank based on periodic reviews of habitat response pursuant to §724.F.10; or

ii. for banks which include features which do not typically require operation or maintenance and involve the types of mitigation measures which have produced consistent and demonstrated success, 100 percent of available credits would be made available to the mitigation bank operator when the bank becomes operational, provided that:

(a). the operator has established a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank; and

(b). the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for a period of five years, for remediation of the mitigation bank features; or

iii. for banks which include features which typically require remediation, operation, or maintenance (such as water control structures, plugs, channel improvement works, shore or bank protection structures, etc.) or involve the types of mitigation measures which lack consistent and demonstrated success, 25 percent of available credits would be made available, when the bank becomes operational, to the mitigation bank operator for the first two years of operation provided that (1) the operator establishes a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank, (2) the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for the life of the bank, for remediation (as may be needed for expectable and catastrophic events), operation, and maintenance of the mitigation bank, and (3) the operator provides for the life of the bank, in case the operator fails to remediate, operate, or maintain the mitigation bank in accordance with the MOA, legal authority for the department to perform the warranted remediation, operation, or maintenance; the remaining 75 percent of the credits would be made available in the third year provided that a review of habitat response (§724.F.9) indicates initial success of the mitigation features.

b. The conservation servitude shall be established in accordance with R.S. 9:1271 et seq. and shall:

i. cover all the property located within the mitigation bank;

ii. if appropriate, contain specific language regarding the extent of allowable timber harvesting;

iii. if appropriate, contain specific language regarding the extent of other allowable activities;

iv. prohibit all other activities which may reduce the ecological value of the site;

v. specify the term to be 20 years or more for marsh habitats and 50 years or more for forested habitats;

vi. designate the department as the holder of the servitude;

vii. convey a "third party right of enforcement" to any interested MOA signatory or other party as may be mutually agreed to by the secretary and the mitigation bank operator; and

viii. be recorded in the property records of the parish in which the property is located.

c. The financial mechanism established by the mitigation bank operator could be a letter of credit, surety bond, escrow account, or other mechanism; to be acceptable to the secretary the financial mechanism shall:

i. for mitigation banks described in §724.F.7.a.ii, ensure payment of the designated amount for remediation of the mitigation measures for a period of five years;

ii. for mitigation banks described in §724.F.7.a.iii, ensure payment of the designated amount for remediation, operation, or maintenance of the mitigation measures for a period equal to the life of the mitigation bank; and

iii. ensure that such payments would be made to the Louisiana Wetlands Conservation and Restoration Fund in the event that the mitigation bank operator fails to perform the remediation, operation, or maintenance specified in the MOA.

d. If a letter of credit or escrow account is utilized, the letter or account should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that is "significantly under capitalized" or "critically under capitalized" as defined in Section 38 of the Federal Deposit Insurance Act.

e. If a surety bond is utilized, the bond shall be written by a surety or insurance company which, at the time of MOA execution, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus.

8. The formal MOA to be developed between the secretary and the mitigation bank operator shall, at a minimum:

a. provide a statement of purpose;

b. define the physical boundaries of the mitigation bank;

c. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;

d. specify that the period of operation and maintenance of the mitigation bank is 20 years or more for marsh habitats and 50 years or more for forested habitats;

e. describe the mechanism(s), which meets or which will meet the requirements of §724.F.7;

f. identify the habitat assessment methodology utilized to establish the quantity of mitigation to be credited, including an explanation of any calculations necessary to account for a project life which may, at the option of the mitigation bank operator, be greater than 20 years for marsh projects or greater than 50 years for forested wetland projects;

g. identify, by habitat type, the quantity of total credits;

h. identify the schedule for credits becoming available;

i. identify the schedule for reviewing habitat response over the life of the bank;

j. specifically identify the bank operator responsibilities regarding monitoring and/or providing information necessary for habitat response reviews;

k. for mitigation banks described at §724.F.7.a.iii, specifically define the remedial actions for situations where the bank operator fails to perform the necessary remediation, operation, or maintenance, including securing payments pursuant to §724.F.7 and ensuring legal authority for the department to perform necessary remediation, operation, or maintenance; and

l. for mitigation banks described at §724.F.7.a.iii, specifically define the course of action where habitat response is greater than or is less than predicted.

9. The secretary shall review the habitat response of mitigation banks as follows.

a. The mitigation bank operator shall submit the periodic review fee identified at §724.F.3 to the department within 60 days of being requested to do so by the secretary.

b. Failure to submit such payment shall result in suspension of the mitigation bank until such time that the fee is submitted; if the fee is not submitted within 120 days of the secretary's request, the mitigation bank shall be terminated and the secretary shall require the mitigation bank operator to provide compensatory mitigation to offset the ecological value credits which were debited but not actually produced by the time of termination.

c. State advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator shall be invited to participate in each habitat response review; the secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting related to these reviews.

d. For all banks, a review shall be conducted prior to the end of the second full year of the bank being considered operational, but at least 20 months after commencement of operation; the purpose of this review is to determine if any remediation or adjustments to the prescribed operation or maintenance is necessary.

e. For those banks described at §724.F.7.a.iii, if the review conducted prior to the end of the second full year of operation indicates that the mitigation measures are functioning as projected, the remaining 75 percent of the mitigation credits shall be made available to the mitigation bank operator; if that review indicates that the mitigation measures are not functioning as projected, no additional mitigation credits shall be made available to the mitigation bank operator until such time that a recalculation of projected credits is made and/or it is demonstrated that the mitigation measures are functioning as predicted.

f. In addition to the review conducted prior to the end of the second full year of operation, a review of all marsh mitigation banks shall be conducted within four months prior to the completion of the fifth, tenth, fifteenth, and twentieth years, and a review of all forested wetland mitigation banks shall be conducted prior to the completion of the fifth, tenth, twentieth, thirtieth, fortieth, and fiftieth years. The purposes of these reviews are to determine if remediation is needed, to determine the possible benefit of revising project features and/or their operation or maintenance, to determine if the mitigation bank operator has operated and maintained the mitigation measures as agreed to in the MOA, and to determine if the habitat has responded as predicted.

10. If the secretary and mitigation bank operator agree, pursuant to §724.F.7.a, to ensure appropriate remediation, operation, and maintenance of mitigation bank features via the incremental availability of mitigation credits during the life of the bank, the following procedures shall be followed.

a. Twenty-five percent of the total credits for mitigation banks (marsh and forested wetland banks) shall be made available to the mitigation bank operator upon full implementation of the wetland mitigation measures described in a signed MOA; or if a signed MOA calls for phased implementation of the mitigation measures, an appropriate percentage, not to exceed 25 percent shall be made available to the mitigation bank operator upon implementation of the initial phase(s); these credits shall be referred to as available credits.

b. If at any time, the mitigation bank can not be operated and maintained as described in the MOA due to force majeure, the mitigation bank operator shall have the option of rectifying the wetland creation, restoration, protection, and enhancement measures.

i. If the mitigation bank operator chooses to rectify those measures, the secretary shall recalculate the number of total credits, if it is anticipated that such a recalculation would yield a result substantially different from the current projection of total credits.

(a). The amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
1 – 5	Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater.
6 – 10	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
11 – 15	Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater.
16 – 20	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(b). The amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
1 – 5	Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater.
6 – 10	Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater.
11 – 20	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
21 – 30	Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater.
31 – 40	Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater.
41 – 50	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

ii. If the mitigation bank operator chooses not to rectify those measures, the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall continue only if the initially available credits (i.e., 25 percent) have not yet been debited, and shall cease when those initially available credits are debited. If credits debited already exceed the initially available credits, the secretary shall not require the mitigation bank operator to compensate for credits already debited.

c. If a periodic review reveals that the mitigation bank operator has complied with the MOA, total and available credits shall be adjusted as follows.

i. If the habitat is responding as predicted:

(a). the amount of total credits which shall be made available for marsh mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	50 percent of total credit minus previously debited credit.
10	75 percent of total credit minus previously debited credit.
15	100 percent of total credit minus previously debited credit.

(b). the amount of total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	35 percent of total credit minus previously debited credit.
10	50 percent of total credit minus previously debited credit.
20	65 percent of total credit minus previously debited credit.
30	80 percent of total credit minus previously debited credit.
40	100 percent of total credit minus previously debited credit.

ii. If the habitat is responding better than predicted and the secretary anticipates that the total credits to be generated would likely be greater than the original projection of total credits, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
5	50 percent of recalculated total credit minus previously debited credit.
10	75 percent of recalculated total credit minus previously debited credit.
15	100 percent of recalculated total credit minus previously debited credit.

(b). the amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
5	35 percent of recalculated total credit minus previously debited credit.
10	50 percent of recalculated total credit minus previously debited credit.
20	65 percent of recalculated total credit minus previously debited credit.
30	80 percent of recalculated total credit minus previously debited credit.
40	100 percent of recalculated total credit minus previously debited credit.

iii. If the habitat is responding favorably but not as well as predicted, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
10	Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater.
15	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater.
10	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
20	Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater.
30	Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater.
40	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(c). the secretary shall not require the mitigation bank operator to compensate for credits already debited as long as the mitigation bank continues to operate.

iv. If implementation of the mitigation bank is adversely affecting the bank area (i.e., actually producing less ecological value than would have been produced without implementation of the mitigation bank):

(a). the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall cease unless and until the mitigation bank operator implements measures, as prescribed by the secretary, to reverse the adverse effect;

(b). if the adverse effect is not reversed, the secretary may not require the mitigation bank operator to compensate for credits already debited;

(c). if the mitigation bank operator attempts to reverse the adverse effect, the debiting of mitigation credits may continue, but shall not go beyond the initially available credits (i.e., 25 percent) until the secretary determines that adverse affect is reversed;

(d). if the adverse effect is reversed, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank; and

(i). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(a); and

(ii). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(b);

(e). the secretary shall determine if the adverse effect has been reversed based on field investigations; consultation with the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator; and other methods the secretary deems appropriate.

d. If a periodic review reveals that the mitigation bank operator has failed to comply with the MOA, unless such failure is due to force majeure, the debiting of mitigation credit shall cease and shall not resume unless the compliance failures are rectified within 90 days from a notification by the secretary of apparent failures:

i. if the compliance failures are rectified, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank if it is anticipated that such a recalculation would yield a result substantially different from the current projection:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(a);

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(b);

ii. if the compliance failures are not rectified, the secretary may require the mitigation bank operator to provide compensatory mitigation to offset the ecological value of the credits which were debited, but not actually

produced, and the secretary may require additional measures via permit modification or revocation.

11. Use of Mitigation Banks for Meeting Compensatory Mitigation Requirements

a. The mitigation bank shall not be considered operational until the following conditions have been met:

i. the mitigation bank operator has submitted to the department the mitigation bank establishment fee (§724.F.3);

ii. the MOA described in §724.F.8 has been signed by the bank operator and the secretary;

iii. the mitigation bank operator has provided evidence that one of the options required pursuant to §724.F.7 has been selected and the conditions of such option have been met;

iv. the wetland mitigation measures described in a signed MOA have been fully implemented; or at least the initial phase(s) of the mitigation measures have been implemented if the signed MOA calls for phased implementation.

b. A permit applicant may acquire, subject to approval by the secretary, mitigation credits from the operator of an approved mitigation bank to meet compensatory mitigation requirements; the applicant is required to provide written evidence to the secretary that such acquisition has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary; mitigation credits may be acquired as compensatory mitigation for activities which are not subject to this Chapter, provided that the secretary is advised of any such transactions; acquired credits shall be debited from available credits.

c. Mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.

d. The type of, and acceptability of utilizing, mitigation credits shall be determined in accordance with §724.J.

e. The quantity of credits to be debited shall be determined in accordance with §724.C.

f. The secretary shall maintain an account of total, available, and debited credits for each approved mitigation bank.

g. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation bank, if sufficient credits are available from that mitigation bank, shall be accomplished as follows:

i. the applicant shall acquire, from the mitigation bank operator, the type and quantity of mitigation credits equivalent to the anticipated net loss of ecological value due to the permitted activity; and

ii. the quantity of total credits for that mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the mitigation bank and from the calculation of total credits.

h. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation bank, if sufficient credits are not available from that mitigation bank, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.

12. Any donation, sale, trade, or other transfer of mitigation credits, for purposes other than those provided in §724.F.11, must receive approval of the secretary and shall be allowed only upon a concurrent transfer of the mitigation bank MOA or upon concurrent execution of a separate MOA between the recipient of those credits and the secretary.

G. Advanced Mitigation Projects

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to implement advanced mitigation projects.

2. A party which establishes an advanced mitigation project shall be referred to as an advanced mitigation sponsor.

3. In determining the acceptability and appropriateness of establishing an advanced mitigation project, the secretary shall consider the following factors:

a. the potential advanced mitigation sponsor's history of compliance with the guidelines and the state program over at least the preceding five years;

b. the advanced mitigation sponsor's willingness and potential ability to maintain the advanced mitigation project for a period of time determined to be appropriate for the subject project;

c. the advanced mitigation project's potential to create, restore, protect, and/or enhance vegetated wetlands and the project's potential to be "self-maintaining" for the appropriate period of time;

d. the advanced mitigation project's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;

e. the advanced mitigation project's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the advanced mitigation project; and

f. whether the proposed advanced mitigation project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other

effort designed to create, restore, protect, and/or enhance vegetated wetlands.

4. The area from which credits would accrue for advanced mitigation projects shall not exceed 20 acres. In certain special cases, however, the secretary may allow expansion of the area from which credits would accrue, provided that after a waiting period of at least five years from project implementation a habitat re-evaluation demonstrates that an area beyond 20 acres has been benefited.

5. In addition to the fees identified at §723.C.3.b.i-ii, nonrefundable fees shall be charged for the initial evaluation, establishment, habitat evaluation, and periodic review of advanced mitigation projects according to the following table.

Informal Review	$ 0
Initial Evaluation Fee	$ 50
Establishment Fee	$100
Post-Implementation Evaluation Fee	$250
Periodic Review Fee	$ 50

6. Use of Advanced Mitigation Credits

a. Advanced mitigation credits shall not be available for use until the following conditions have been met:

i. the advanced mitigation sponsor has submitted all necessary fees to the department;

ii. the MOA described in §724.G.7.h has been signed by the advanced mitigation sponsor and the secretary;

iii. the wetland mitigation measures described in the signed MOA have been implemented and in place for one year or more, as determined on an individual case basis;

iv. the secretary has, pursuant to §724.G.9, performed the post-implementation evaluation and determined the type and quantity of advanced mitigation credits which would be attributable to the subject advanced mitigation project.

b. Advanced mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.

c. If the advanced mitigation sponsor is a permit applicant, the sponsor may use, subject to approval by the secretary, advanced mitigation credits from its approved advanced mitigation project to meet its compensatory mitigation requirements; other permit applicants may acquire advanced mitigation credits from the sponsor of an approved advanced mitigation project to meet compensatory mitigation requirements, subject to approval by the secretary and subject to following limitations.

i. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a local governmental entity may be used to meet compensatory mitigation requirements only for activities occurring within the geographic limit of the sponsoring entity's jurisdiction.

ii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a private entity (including but not limited to businesses, industry, landowners, resource conservation groups) may be used to meet compensatory mitigation requirements only for activities undertaken by the advanced mitigation sponsor or for activities undertaken on property owned by the advanced mitigation sponsor.

iii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a state or federal agency may be used to meet compensatory mitigation requirements only for activities undertaken by the sponsoring agency or on the refuge, management area, etc. where the advanced mitigation project is located.

d. For situations where the permit applicant is not the sponsor of the advanced mitigation site, the applicant is required to provide written evidence to the secretary that the acquisition of credits has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary.

e. The secretary shall maintain an account of total, debited, and remaining advanced mitigation credits for each approved advanced mitigation project.

f. The type of, and acceptability of utilizing, advanced mitigation credits shall be determined in accordance with §724.J.

g. The quantity of credits needed to meet compensatory mitigation requirements shall be determined in accordance with §724.C.

h. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are remaining for that advanced mitigation project, shall be accomplished as follows:

i. the sponsor shall use, or other permit applicants shall acquire, the appropriate type and quantity of advanced mitigation credits needed to offset the anticipated net loss of ecological value due to the permitted activity; and

ii. the quantity of total and remaining credits for that advanced mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the advanced mitigation project and from the calculation of total and remaining credits.

i. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are not available from that advanced mitigation project, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.

7. Proposals for the establishment of advanced mitigation projects shall be processed as follows.

a. The secretary shall provide, without charging a fee, potential advanced mitigation sponsors an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential advanced mitigation sponsors shall submit a written request for the secretary to consider designation of an advanced mitigation project; the following must be provided with the request:

i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;

ii. detailed drawings and project description unless such information is on file with the department;

iii. a statement describing the extent to which the project has been implemented;

iv. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

v. the advanced mitigation project initial evaluation fee of $50.

c. The secretary shall review the request and within 20 days:

i. inform the potential advanced mitigation sponsor of the request's completeness; and

ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the additional information necessary to evaluate and process the request.

d. Within 30 days of the secretary's acceptance of the request as complete, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in an on-site meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).

e. Within 60 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as an advanced mitigation project, and:

i. if the project is preliminarily determined to be acceptable as an advanced mitigation project, the secretary shall inform the potential advanced mitigation sponsor of such determination; or

ii. if the project is preliminarily determined to be unacceptable as an advanced mitigation project, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as an advance mitigation project.

f. Once the proposed project is preliminarily determined to be acceptable as an advanced mitigation project, the potential advanced mitigation sponsor shall obtain any necessary permits/authorizations in accordance with applicable state and federal laws.

g. Once all necessary permits/authorizations have been obtained, the potential advanced mitigation sponsor shall submit the advanced mitigation project establishment fee of $100.

h. Within 10 days of receipt of the establishment fee, the secretary shall initiate negotiations among the department, the potential advanced mitigation sponsor, other state agencies, the Corps, and federal advisory agencies to develop a formal MOA. The MOA signed by the secretary and the advanced mitigation sponsor shall serve as the formal document which designates a project as an advanced mitigation project. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the advanced mitigation project by signing the MOA. The formal MOA shall, at a minimum:

i. provide a statement of purpose;

ii. define the area of benefit of the advanced mitigation project;

iii. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;

iv. establish the period of time that the advanced mitigation project would be operational;

v. identify the habitat assessment methodology utilized to establish the quantity of advanced mitigation credits, including an explanation of any calculations necessary to account for a project life which may differ from 20 years for marsh projects and which may differ from 50 years for forested wetland projects;

vi. sufficiently identify pre-project conditions to allow comparison at the time of the post-implementation habitat evaluation;

vii. specify the period of time allowed for project implementation, the period of time between completion of implementation and the post-implementation habitat evaluation (one year or more), the period of time allowed for the advanced mitigation sponsor to submit the post-implementation habitat evaluation fee of $250, the period of time allowed for the habitat evaluation to be completed by the secretary, and the point in time when advanced mitigation credits would be made available to the advanced mitigation sponsor;

viii. if deemed necessary for the subject project, identify a schedule for review of habitat response subsequent to the post-implementation habitat evaluation;

ix. if deemed necessary for the subject project, identify the advanced mitigation sponsor's responsibilities for providing post-construction information (e.g., as-built drawings), monitoring information, or other information necessary for any habitat response reviews; and

x. if deemed necessary for the subject project, identify any requirements or mechanisms for performing or assuring maintenance of project features.

8. In accordance with the MOA, the advanced mitigation sponsor shall implement the advanced mitigation project and, at the appropriate time, submit the post-implementation habitat evaluation fee of $250.

9. The secretary shall determine the quantity, by habitat type, of advanced mitigation credits available for donation, sale, trade, or use from an advanced mitigation project within the time frame established in the MOA and in accordance with the following.

a. The secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor to participate in the determination of advanced mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor made during, or received in writing within 20 days of, each field investigation or other meeting held to determine advanced mitigation credits.

b. The total quantity of advanced mitigation credits (AAHUs or CHUs), by habitat type, attributable to the advanced mitigation project shall be determined by applying the methodology described in §724.C.

c. For projects which have been partially implemented prior to designation as an advanced mitigation project, advanced mitigation credits would be limited to those attributed to only those features implemented after execution of the MOA. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of the total advanced mitigation credits.

10. The use of advanced mitigation credits shall be in accordance with §724.G.6.

H. Individual Compensatory Mitigation Measures

1. A permit applicant may implement an individual mitigation measure or measures to satisfy the compensatory mitigation requirements of a proposed activity.

2. The secretary shall determine the acceptability of an individual compensatory mitigation measure(s) in accordance with §724.J.

3. The sufficiency of an individual mitigation measure or measures shall be determined in accordance with §724.C, best professional judgment, or a combination of the methodology presented in §724.C and professional judgment. When applying the methodology presented in §724.C, the secretary shall consider the probable life of the proposed mitigation measure and the future ability and willingness of the permit applicant to maintain the proposed mitigation.

I. Monetary Contributions to the Affected Landowner, Affected Parish, and/or the Louisiana Wetlands Conservation and Restoration Fund

1. Compensatory mitigation may be accomplished by monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund.

2. Such monetary contributions shall be used only to offset anticipated unavoidable net losses of ecological values and shall be selected as the compensatory mitigation option only in accordance with §724.J.

3. The secretary shall determine the amount of the monetary contribution by the formula: (anticipated unavoidable net loss of ecological value, measured in AAHUs) □ (annual base mitigation cost) □ (project years) = compensatory mitigation cost.

4. The determination of anticipated unavoidable net loss of ecological value, in AAHUs, that would result from the proposed activity shall be made in accordance with §724.C.

5. The annual base mitigation cost (ABMC) represents the cost of producing one AAHU for one year, within each habitat type within each hydrologic basin. The ABMC is based on example projects which could feasibly be constructed within each habitat type, within each basin, and was determined by the following formula: [sum for example projects (annual project cost / AAHUs produced)] / number of example projects.

6. ABMCs are provided in the following table.

Hydrologic Basin	Fresh Marsh	Intermediate Marsh	Brackish Marsh	Saline Marsh	Hardwoods	Fresh Swamp
Pontchartrain	380	396	420	443	32	283
Breton	364	389	411	518	32	283
Mississippi River	331	331			32	283
Barataria	373	389	411	443	32	283
Terrebonne	338	353	376	443	32	283
Atchafalaya River	350	350			32	283
Teche/Vermilion	369	387	412	455	32	283
Mermentau	369	387	412	455	32	283
Calcasieu/Sabine	359	387	412	455	32	283

7. The secretary may periodically update the table at §724.I.6 utilizing the best available data, in accordance with provisions of R.S. 49:953.

8. If compensatory mitigation is to be accomplished via monetary contribution, the issued permit shall include a condition which:

a. identifies the monetary amount determined pursuant to §724.I.3-6; and

b. specifies that the money would be transferred, upon request by the secretary, to the affected landowner, affected parish, or the Louisiana Wetlands Conservation and Restoration Fund as selected by the secretary in accordance with §724.I.9.a or §724.I.12-20.

9. To ensure compliance with such a permit condition, the permit shall not be issued:

a. until the monetary contribution has been made to the affected landowner, provided that a plan for use of that money has been accepted by the secretary prior to, or during, the permit processing period, subsequent to coordination among the applicant, affected landowner, the Corps, and state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation; or

b. until the secretary has received a letter of credit on behalf of the permit applicant, pursuant to §724.I.10; or

c. until it has been demonstrated to the secretary that a surety bond has been established by the permit applicant pursuant to §724.I.11.

10. If a letter of credit is utilized, the letter:

a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permittee fails to comply with the permit condition required by §724.I.8;

b. should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that is "significantly under capitalized" or "critically under capitalized" as defined in Section 38 of the Federal Deposit Insurance Act;

c. shall include a clause which causes an automatic renewal of the letter of credit until such time that the secretary returns the letter of credit to the permit recipient and/or depository; and

d. shall require the secretary to return the letter of credit to the permit recipient and/or depository upon compliance with the permit condition.

11. If a surety bond is utilized, the bond:

a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permit recipient fails to comply with the permit condition required by §724.I.8;

b. shall be written by a surety or insurance company which, at the time of permit issuance, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus;

c. shall have a term of five years; and

d. shall require the secretary to release the bond to the permit recipient upon compliance with the permit condition.

12. Unless a plan for the use of compensatory mitigation funds has been accepted by the secretary pursuant to §724.I.9.a, the secretary shall request proposals for the utilization of compensatory mitigation money from each affected landowner which demonstrated an interest, pursuant to §724.J.5.a.vi or §724.J.6.d.vi, in receiving compensatory mitigation. The secretary's request for proposals shall be made in writing and within 10 days of permit issuance. The request shall include the following:

a. identification of the permitted activity for which payment of compensatory mitigation money is being required;

b. information regarding the habitat type and ecological value (acreage and habitat value) to be strived for;

c. announcement of the sum of money potentially available; and

d. a request that the affected landowner provide to the secretary, in writing and within 25 days of receipt of such a request, a conceptual mitigation plan for use of the compensatory mitigation money.

13. Proposals for expenditure of compensatory mitigation money shall be acted upon as follows.

a. Within 10 days of receipt of a conceptual mitigation proposal, the secretary shall forward the proposal to those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation. Concurrently, the proposal shall also be forwarded to the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

b. Over the following 60 days, the secretary shall interact with the interested agencies, the affected landowner, and the affected parish (if interested) to finalize the plan for use of the compensatory mitigation money. To be considered acceptable by the secretary, the plan must satisfy the criteria presented in §724.J.2-6. The 60-day period may be extended if requested by the landowner, provided that negotiations are being carried on in "good-faith."

c. If any permits/approvals are needed to implement the acceptable plan, the landowner shall submit the applications/requests to the appropriate entities within 20 days of the plan being deemed "acceptable."

d. If the affected landowner is unable to obtain the necessary approvals for a plan which had been deemed "acceptable" within 60 days of submittal due to concerns of, or lack of consent by, the Corps or state and federal advisory agencies, the secretary shall allow the landowner an additional 30 days to submit an alternate conceptual plan, and the alternate proposal shall be acted upon in accordance §724.I.13.

14. Once a plan is deemed "acceptable" and all necessary approvals have been obtained:

a. within 30 days, the landowner shall provide the secretary with a detailed written estimate of the total cost of implementing the plan;

b. within 10 days of receipt of the estimate, the secretary shall:

i. review the estimate for apparent completeness and accuracy, etc.; and

ii. if the estimate does not appear complete, accurate, and generally in order, identify the deficiencies and request the landowner to revise and submit a complete and accurate estimate; the revised estimate shall be submitted within 15 days of receipt of the secretary's request;

c. within 10 days of receipt of an apparently complete and accurate estimate, the secretary shall request in writing, the permit recipient to provide to the affected landowner a payment of money equal to the estimate, but not to exceed the amount identified in the issued permit;

d. the permit recipient shall make such payment to the affected landowner and provide evidence to the secretary that such payment has been made within 30 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of evidence by the secretary;

e. if such payment is made to the landowner:

i. the plan shall be initiated within 45 days of receipt of the payment unless the accepted plan includes seasonal considerations for implementing certain measures, such as grass or tree plantings;

ii. within 15 days of the end of the period allowed for initiation, the landowner shall inform the secretary in writing of the status of plan implementation;

iii. the plan shall be completely implemented within 90 days of initiation unless the accepted plan includes a specific time allotment for completion, or an unexpected circumstance provides a valid reason for delay;

iv. within 30 days of completion of the accepted plan, the landowner shall submit evidence that the accepted plan has been implemented, including a copy of invoices, bills, receipts demonstrating the total monetary expenditure;

v. if the landowner fails to implement the plan in a timely manner, the landowner shall make payment, equal to the amount received from the permit recipient, to the Louisiana Wetlands Conservation and Restoration Fund within 30 days of being requested by the secretary;

vi. if the landowner fails to implement the plan in a timely manner and fails to make payment to the Louisiana Wetlands Conservation and Restoration Fund in a timely manner, the landowner shall be subject to legal remedies to compel the landowner to make such payment, and further, the landowner shall be ineligible to receive compensatory mitigation money in the future; and

vii. if the total expenditure for implementing the plan is less than the amount paid by the permit recipient, the landowner shall:

(a). utilize the difference within 60 days to implement an additional wetland creation, restoration, protection, and/or enhancement measure(s) approved by the secretary; or

(b). pay the difference to the Louisiana Wetlands Conservation and Restoration Fund;

f. if the permit recipient fails to make the requested payment to the landowner within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary;

g. if the secretary pursues payment via the letter of credit or surety bond:

i. the resultant money shall be deposited into the Louisiana Wetlands Conservation and Restoration Fund; and

ii. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option; and

iii. the secretary shall negotiate with the affected landowner(s) on an individual case basis to formulate an acceptable plan for use of that money on the affected landowner's property; or

iv. if an acceptable plan can not be negotiated for the affected landowner's property, the money shall be utilized pursuant to §724.I.21.

15. The secretary may delay the process of formulating a plan for utilizing compensatory mitigation money for the purpose of combining the compensatory mitigation money from more than one permitted activity, provided that:

a. prior to delaying the process, the secretary considers the views of those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation;

b. prior to delaying the process, the secretary considers the views of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation;

c. the time elapsed from issuance of the first permit to implementation of the mitigation measure(s) would not be expected to exceed two years; and

d. the landowner (or parish) is aware, and can demonstrate, that additional impacts are likely to be proposed on the ownership (or within the parish) within 180 days, and the landowner (or parish) has obtained the necessary permits/approvals for a specific mitigation measure that would require an amount of money greater than that generated from a single permitted activity.

16. A landowner's "right" to utilize the required compensatory mitigation money would cease:

a. if the landowner failed to comply with the requests described in §724.J.5.a.vi, §724.J.6.d.vi, or §724.I.12.d; or

b. if the secretary determines, during the interaction period described in §724.I.13.b, that the attempt to derive a plan mutually acceptable to the landowner and the secretary is futile; or

c. if the landowner failed to comply, without good reason, within the time periods described in §724.I.13.c-d and §724.I.14.a, b, and e; or

d. if the necessary permits/approvals described at §724.I.13.c have not been obtained within 180 days of the submittal of applications/requests, due to failure on the part of the landowner to provide, in a timely manner, adequate information or other material necessary for processing the applications/requests; or

e. if, following an attempt to combine compensatory mitigation money from more than one permitted activity, pursuant to §724.I.15, the mitigation measure is not implemented within two years.

17. If a landowner's "right" to utilize the compensatory mitigation money should cease, the secretary shall, in writing and within 10 days of such cessation:

a. inform the landowner that his/her right to utilize the compensatory mitigation money has ceased; and

b. inform the affected parish of the potential availability of that money for implementing wetland creation, restoration, protection, and/or enhancement measures; such notification shall include the items identified in §724.I.12.a-d.

18. Proposals for expenditure of compensatory mitigation money by a parish shall be acted upon in the manner described for a landowner in §724.I.13 and implemented in the manner described for a landowner in §724.I.14-15.

19. A parish's "right" to utilize the compensatory mitigation money would cease if the conditions described in §724.I.16 existed with regard to the parish.

20. If a parish's "right" to utilize the required compensatory mitigation money should cease, the secretary shall within 10 days of such cessation:

a. inform the parish that its right to utilize the compensatory mitigation money has ceased; and

b. request the permit recipient to provide payment of the amount of money identified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of such payment by the secretary.

21. If such payment is made to the Louisiana Wetlands Conservation and Restoration Fund, the secretary shall select a specific wetland creation, restoration, protection, and/or enhancement measure(s) to be implemented with that money, following consideration of the comments of those state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation during permit processing and utilize that money to implement the selected measure.

22. If the permit recipient does not make the requested payment to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary.

23. If the secretary pursues payment via the letter of credit or surety bond:

a. the resultant money shall be deposited into the Louisiana Wetlands Conservation and Restoration Fund and utilized pursuant to §724.I.21; and

b. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option.

J. Selecting Compensatory Mitigation

1. In selecting compensatory mitigation, the secretary shall consider the recommendations and comments of those state and federal agencies which demonstrated an interest, during permit processing, in participating in the selection of appropriate compensatory mitigation. The secretary shall also consider the recommendations and comments of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

2. The secretary shall ensure that the selected compensatory mitigation, in order of priority, is sufficient (§724.J.3), properly located (§724.J.4), and accomplished by the most desirable available/practicable option (§724.J.5-6).

3. The selected compensatory mitigation proposal must completely offset the unavoidable net loss of ecological value, unless a variance is granted pursuant to §724.K.

4. To be considered properly located, the compensatory mitigation must be selected according to the following prioritized criteria:

a. must have an anticipated positive impact on the ecological value of the Louisiana Coastal Zone;

b. should be on-site if the opportunity exists and if the compensatory mitigation would contribute to the wetland health of the hydrologic basin;

c. should be located, in accordance with R.S. 214.41.E, on the affected landowner's property, provided the secretary determines that the proposed mitigation is acceptable and sufficient;

d. shall be located within the same hydrologic basin as the proposed impact, unless no feasible alternatives for compensatory mitigation exist in that basin; and

e. shall, in order of preference, be located within the same habitat type as the proposed impact; or produce ecological values which would be similar to those lost as a result of the proposed activity, despite being located in a different habitat type; or contribute to the overall wetland health of the hydrologic basin, despite being located in a different habitat type.

5. The procedure for selecting compensatory mitigation for proposed activities which would adversely impact vegetated wetlands on only one landowner's property shall be as follows.

a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall:

i. determine the habitat type and extent (i.e., acreage) of anticipated impact to the affected landowner;

ii. in writing, provide to the applicant basic information regarding the anticipated impact (acreage, habitat type);

iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated with the affected landowner; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;

iv. in writing, provide to the affected landowner basic information regarding the anticipated impact (acreage, habitat type);

v. in writing, suggest to the landowner, that he/she assist the applicant in developing a compensatory mitigation proposal; and

vi. in writing, request that the landowner submit to the secretary, in writing and within 30 days of such request, a statement which would:

(a). indicate acceptance of the applicant's compensatory mitigation proposal; or

(b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or

(c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or

(d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.

b. An applicant's failure to submit a compensatory mitigation proposal as described in §724.J.5.a.iii may cause an interruption of the permit processing period identified at §723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.

c. A landowner's failure to submit the statement described in §724.J.5.a.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.

d. All compensatory mitigation proposals submitted by the landowner or applicant; negotiated among the landowner, applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.

e. Subject to §724.J.1-4, the secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:

i. acquisition of mitigation credits, if the affected landowner has an approved mitigation bank;

ii. use of advanced mitigation credits if the affected landowner has an approved advanced mitigation project, if allowable pursuant to §724.G.6;

iii. if the proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:

(a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowner (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution; or

(b). if the affected landowner forfeited his/her right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on the affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;

iv. individual compensatory mitigation proposal on the affected landowner's property;

v. acquisition of credits from a mitigation bank not on the affected landowner's property;

vi. use of advance mitigation credits from an advanced mitigation project not on the affected landowner's property, if allowable pursuant to §724.G.6;

vii. individual mitigation proposal not on the affected landowner's property;

viii. if the proposed activity would directly impact more than 5.0 acres but no more than 10.0 acres, monetary contribution pursuant to §724.I.

f. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10 acres.

6. For Proposed Activities Which Would Impact Vegetated Wetlands on More than One Landowner's Property

a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall request the applicant to provide a map(s) to the secretary with accurate scale and sufficient detail to determine the extent of impact (i.e., acreage) to each landowner identified pursuant to R.S. 49:214.30.C.2.

b. At this time, the permit processing period identified at §723.C.4.f shall be interrupted until the requested map(s) has been provided.

c. When the anticipated impact to a given landowner would be less than 1 acre, it shall be considered unacceptable to allow that landowner to require compensatory mitigation to be performed on his/her property, unless it is determined to be acceptable by the secretary in certain special cases.

d. Within 10 days of receipt of the map(s) described in §724.J.6.a, the secretary shall:

i. determine the habitat type and extent (i.e., acreage) of anticipated impact to each affected landowner;

ii. in writing, provide to the applicant a list of affected landowners whose anticipated direct impact is 1.0 acre or greater and basic information regarding the anticipated impact (acreage, habitat type) to each of those landowners and for the entire project;

iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated among all affected landowners whose anticipated direct impact is 1 acre or greater; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;

iv. in writing, provide to each landowner whose anticipated direct impact is 1 acre or greater, basic information regarding the anticipated impact (acreage, habitat type) to the subject property and for the entire project;

v. in writing, suggest to each of those landowners, that they assist the applicant in developing a compensatory mitigation proposal; and

vi. in writing, request that each of those landowners submit to the secretary, in writing and within 30 days of such request, a statement which would:

(a). indicate acceptance of the applicant's compensatory mitigation proposal; or

(b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or

(c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or

(d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact a total of 5 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.

e. An applicant's failure to submit a compensatory mitigation plan as described in §724.J.6.d.iii may cause an interruption of the permit processing period identified at §723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.

f. A landowner's failure to submit the statement described in §724.J.6.d.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.

g. All compensatory mitigation proposals submitted by the landowner(s) or applicant; negotiated among the landowner(s), applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.

h. In situations where landowners have proposed separate/multiple compensatory mitigation measures, the secretary shall consider the following factors in selecting compensatory mitigation:

i. cost effectiveness of offsetting ecological value losses via separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s);

ii. practicability, on the part of the secretary, of confirming/enforcing implementation, operation, and maintenance of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s); and

iii. the long-term ecological benefits of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s).

i. The secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:

i. if an affected landowner has an approved mitigation bank, acquisition of mitigation credits, at least for that portion of the impact which occurs on that landowner's property;

ii. if an affected landowner has an approved advanced mitigation project, use of advanced mitigation credits, for that portion of the impact which occurs on that landowner's property, if allowable pursuant to §724.G.6;

iii. if the proposed activity would qualify for authorization under a general permit or if the proposed use would directly impact 5 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:

(a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowners (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution; or

(b). if the affected landowners forfeited their right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on an affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;

iv. individual compensatory mitigation measure(s) acceptable to all interested landowners;

v. individual compensatory mitigation measure(s), that would have a positive effect on one or more, but not necessarily all, of the interested landowner's properties;

vi. acquisition of credits from a mitigation bank not on an affected landowner's property;

vii. use of advanced mitigation credits from an approved advanced mitigation project not on an affected landowner's property, if allowable pursuant to §724.G.6;

viii. individual mitigation proposal not on an affected landowner's property;

ix. if the proposed activity would directly impact more than 5 acres but no more than 10 acres, monetary contribution pursuant to §724.I.

j. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10 acres.

K. Variances from Compensatory Mitigation Requirements

1. Pursuant to the remainder of this Section, the secretary shall grant a full or partial variance from the compensatory mitigation requirement (variance) when a permit applicant has satisfactorily demonstrated to the secretary:

a. that the required compensatory mitigation would render impracticable an activity proposed to be permitted; and

b. that such activity has a clearly overriding public interest.

2. Variance Request Requirements

a. Following the application of §724.B; development of a compensatory mitigation option(s) pursuant to §724.J; and presentation by the secretary (in accordance with §723.C.8.b) of a draft permit, including conditions for compensatory mitigation, the permit applicant may file a variance request with the secretary.

b. The variance request must be filed and resolved prior to initiation of the proposed activity.

c. The variance request must be filed in writing and include the following:

i. a statement explaining why the proposed compensatory mitigation requirement would render the proposed activity impracticable, including supporting information and data; and

ii. a statement demonstrating that the proposed activity has a clearly overriding public interest by explaining why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, including supporting information and data.

d. As part of the requirements of §724.K.2.c, requests for variances for mineral exploration, extraction, and production activities shall include production projections, including supporting geologic and seismographic information; a projected number of new jobs; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

e. As part of the requirements of §724.K.2.c, requests for variances for mineral transportation activities shall include information regarding the amount of product proposed to be transported; the destination of the product; a projected number of new jobs and their location; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

f. As part of the requirements of §724.K.2.c, requests for variances for flood protection facilities shall include the following information:

i. a detailed description of the existing infrastructure which would be protected by the flood protection facility, including public facilities (e.g., roads, bridges, hospitals, etc.), residential areas (including approximate number of homes and associated residents), industries, and businesses;

ii. detailed drawings or photographic documentation depicting the locations of the above infrastructure components;

iii. a detailed description of the extent and severity of past flooding problems and projections of potential damages due to future flooding events; and

iv. a description of nonstructural and structural flood protection and reduction measures which have been undertaken or implemented in the past, or are reasonably expected to occur in the future.

g. As part of the requirements of §724.K.2.c, all requests for variances shall include cost estimates for implementing the proposed project and performing compensatory mitigation.

h. The request shall be accompanied with a nonrefundable filing and hearing fee of $250.

3. Review and Notification by the Secretary

a. The secretary shall review a variance request and inform the applicant of its completeness within 15 days of receipt.

b. If the variance request is not complete or if additional information is needed, the secretary shall request from the applicant, the additional information necessary to evaluate and process the request. If the applicant fails to respond to such request within 30 days, the secretary may advise the applicant that his request will be considered withdrawn unless the applicant responds within 15 days of such advisement. If the request is considered withdrawn, to reinstate the request, the applicant will be required to resubmit the request, accompanied with an additional nonrefundable filing and hearing fee of $250.

c. The secretary shall not issue a variance prior to publishing a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement", and accepting and considering public comments.

d. Within 30 days of the secretary's acceptance of the variance request as complete, the secretary shall review the request, considering the criteria set forth in §724.K.1, and either:

i. notify the applicant of the secretary's intention to deny the request, including his rationale; or

ii. determine that the variance request warrants further consideration and publish a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

e. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall be published in the official state journal, mailed to Joint Public Notice mailing recipients and all persons that submitted comments on the original public notice, and provided to the local governing authority of the parish or parishes where the proposed activity would take place.

f. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall contain the following:

i. name and address of the applicant;

ii. the location and description of the proposed activity;

iii. a description of the area to be directly impacted (acres and habitat types) and quantification of anticipated unavoidable net losses of ecological value;

iv. a description of the compensatory mitigation plan proposed as a condition of permit issuance;

v. a description of the nature and extent of the variance;

vi. a summary of the information presented by the applicant in fulfillment of §724.K.2.c-g;

vii. an unsigned secretarial "Statement of Finding" regarding why the proposed compensatory mitigation requirement may render the proposed activity impracticable and comparing the public interest benefits of the proposed activity to the public interest benefits of requiring compensatory mitigation for the wetland values lost as a result of the activity; and

viii. notification that public comments, including requests for public hearings, will be accepted for 25 days from the date of publication of the "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

4. Public Hearings on Variance Requests

a. A public hearing shall be held when:

i. requested by the applicant following the secretary announcing his intention to deny a variance request;

ii. the secretary determines that a public hearing is warranted, following a review of comments received during the period described in §724.K.3.f.viii; or

iii. the conditions described at §723.C.6.c are met.

b. Public hearings shall be conducted in accordance with §727.

5. Final Variance Decision

a. The secretary shall issue a final variance decision based on full consideration of the criteria set forth in §724.J.1, information submitted by the applicant, comments received during the public comment period, and comments received at the public hearing if one is held. A "Statement of Finding" described in §724.K.5.b shall be prepared:

i. within 15 days of the closing of the public comment period if the secretary determines that a public hearing is not warranted; or

ii. within 15 days of the public hearing if one is held.

b. The secretary shall prepare a signed final "Statement of Finding" which explains the reasons for denying a variance or describes why the proposed compensatory mitigation requirement would have rendered the proposed activity impracticable, describes why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of requiring compensation for wetland values lost as a result of the activity; and describes the nature and extent of the granted variance. This statement shall be part of the permit record, available to the public, and attached to the granted permit.

c. The final variance decision is subject to reconsideration as described at R.S. 49:214.35.

6. Duration of Variance

a. A variance shall be valid only for the original permit recipient. Any party receiving a transferred permit may seek a variance, through the procedures established by §724.K.2-5.

b. A variance shall be valid for the initial terms of the permit to which it is specifically related, unless the variance is modified, or revoked in accordance with §724.K.7.

c. The secretary may extend a variance, in accordance with §723.D.5., concurrently with the extension of the permit to which it is specifically related.

7. Modification or Revocation of Variance

a. If requested by the applicant, the secretary shall consider modifying a variance, according to the procedures described in §724.K.2-5.

b. A third party may request the secretary to consider a modification or revocation of a variance, based on lack of conformance to the criteria set forth in §724.K.1.

c. The secretary may revoke a variance, if:

i. there are inaccuracies in the information furnished by the applicant during the permit or variance review period; or

ii. there is any violation of the conditions and limitations of the permit to which the variance is specifically related; or

iii. there is any violation of the conditions and limitations of the variance; or

iv. the applicant misrepresented, without regard to intent, any material facts during the variance or permit review period; or

v. the actual public interests of the activity turn out to be significantly less than that estimated by the applicant in its statements filed in association with the variance request review.

d. The procedure for revoking a variance shall be as follows.

i. The secretary shall, in writing, inform the variance holder that revocation is being considered, providing reasons for the potential revocation and advising the variance holder that he will be given, if requested within 10 days from receipt of the notice, an opportunity to respond to the reasons for potential revocation.

ii. After consideration of the variance holder's response, or if no response is received, the secretary shall provide written notice to the variance holder, allowing the variance to remain valid or explaining newly imposed compensatory mitigation requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995).

Subchapter D. Local Coastal Management Programs

§725. Development, Approval, Modification, and Periodic Review of Local Coastal Management Programs

A. Letter of Intent. Parishes intending to apply for grants to prepare a local coastal management program (LCMP) shall notify the secretary of DNR by sending a letter of intent approved by the parish Police Jury or Council.

B. Program Development

1. The process for developing a local program will consist of:

a. a division of the parish's coastal zone into units that have similar environmental and natural resource characteristics (environmental management units) and an identification and mapping of the features, resources, and resource users of those units;

b. an analysis of the projected social and economic growth for the parish. This analysis must include projected population growth, projected expansion of economic sectors, estimated demand for and use of land, and an assessment of how these projected changes will affect the natural resources of each management unit as well as the parish as a whole;

c. an identification of existing and potential resource-use conflicts including their location and severity. Identified problems should be mapped to the extent possible;

d. an identification of particular areas, if any, within the parish requiring special management as a result of their unique natural resource or development potentials;

e. the development of goals, objectives and policies for the management of the parish's coastal zone. This shall include those goals and objectives applicable to the entire parish coastal zone and specific objectives and priorities of use for each management unit and identified particular area, if any. Except as specified in Subparagraph D.1.d below, these policies, objectives and priorities of uses must be consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines;

f. the development of procedures providing for the full participation of federal, state, local and municipal government bodies and the general public in the development and implementation of the parish program;

g. the development of the necessary authorities, procedures, and administrative arrangements for reviewing, issuing, and monitoring permits for uses of local concern;

h. the development of special procedures and methods for considering uses within special areas designated pursuant to §214.29 of the SLCRMA, if any, and the impacts of uses on the special areas;

i. the development of special procedures and methods for considering uses of greater than local benefit and uses affecting state or national interests.

C. Program Content

1. Local programs may be submitted for approval after being developed in accordance with Subsection B and shall consist of:

a. a summary of the local program;

b. maps and descriptions of the natural features, resources, and existing land use in each management unit. These maps shall depict the division of the coastal areas into coastal waters and wetlands, transitional areas, fastlands, and lands more than 5 feet above mean sea level;

c. the results of the social and economic analysis carried out pursuant to Subparagraph B.1.b, above;

d. a description of those existing and future resource-use conflicts identified pursuant to Subparagraph B.1.c, above;

e. an identification of those particular areas, if any, requiring special management as described in Subparagraph B.1.d above, as well as the special policies and/or procedures to be applied to these areas;

i. statement of the goals, objectives, policies, and priorities of uses included in the program, as described in Subparagraph B.1.e.;

ii. a statement assuring that the policies of the local program are consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines and that the local program shall be interpreted and administered consistently with such policies, objectives, and guidelines;

f. a description of the authorities and administration arrangements regulating uses of local concern, for reviewing, issuing, and monitoring local coastal use permits, and for enforcing the local program, including:

i. a concise explanation of how the local program's coastal management process is to work;

ii. a description and listing of those areas and uses that will require local coastal use permits;

iii. an illustrative list of particular activities which occur either in fastlands or on lands more than 5 feet above mean sea level that have, or may have, direct and significant impacts on coastal waters;

iv. an analysis of all ordinances included in the local program demonstrating that the effect of such ordinances, when applied to uses not subject to the local coastal use permit program, would result in compliance with the goals and provisions of the SLCRMA, as amended, the objectives of the Louisiana Coastal Resources Program (LCRP), and the policies of the coastal use guidelines;

v. a description of the administrative means by which the parish will coordinate with other governmental bodies during program implementation regarding:

(a). local program implementation, including copies of any interagency or intergovernmental agreements;

(b). multiparish environmental considerations;

(c). consideration by the parish of regional, state, or national interests; and

(d). regional, state, or national plans affecting the parish coastal zone and other projects affecting more than one parish;

vi. certified copies of all ordinances, plans, programs, and regulations proposed to be included in the program;

vii. a resolution from the governing body of the parish expressing approval of the local program as submitted and its intent to implement the submitted program subsequent to state approval;

g. documentation that the parish has provided a full opportunity for governmental and public involvement and coordination in the development of the local program. It must be shown that:

i. at least one public hearing was held in the coastal zone on the total scope of the proposed program;

ii. public notice of the availability of the draft proposed program was given at least 30 days prior to the hearing. Copies of the program must have been available for distribution to relevant state, federal and local governmental agencies, and the general public and were available for public inspection at reasonable hours at all libraries within the parish, the offices of the police jury, and the city or town hall of all the municipalities in the coastal zone;

iii. full consideration was given to comments received during program development and the public hearings.

D. Program Approval

1. Local programs may be submitted for approval after promulgation of these rules and the state guidelines. The following procedures shall apply.

a. Fifteen copies of the complete proposed local program shall be submitted to the secretary. The local government shall have additional copies available for distribution upon request. The secretary shall, within 15 days of the filing of a complete program give public notice of the submittal of the proposed local program, of the availability of copies of the program for public review and of the date, time and place of a public hearing on the program and request public comment. The secretary shall give full consideration to all comments received.

b. The secretary shall, within 90 days of the giving of public notice, either approve the local program or notify the local government of the specific changes which must be made in order for it to be approved.

c. In order to approve the local program, the secretary must find that:

i. the program is consistent with the state guidelines and with the policies and objectives of the SLCRMA;

ii. the program submitted for approval contains all the elements required by Subsection C above and that the materials submitted are accurate and are of sufficient specificity to provide a basis for predictable implementation of the program;

iii. that the proposed program, and the policies, objectives, and priorities of use in the program, are of a sufficient comprehensiveness and specificity to address the identified resource-use conflicts and are consistent with the goals of the SLCRMA, the objectives of the LCRP, and the policies of the coastal use guidelines;

iv. full opportunity has been provided for federal, state, local and municipal governmental bodies and the general public to participate in the development of the program pursuant to Subparagraph C.1.g above;

v. the local government has included within the program all applicable ordinances and regulatory or management programs which affect the coastal zone; that these authorities are of sufficient scope and specificity to regulate uses of local concern; that the regulatory program meets all requirements for procedures and time frames established by the SLCRMA and regulations of the department; that sufficient authority is provided to enforce the local program, including provisions for those penalties provided by §214.36 of the SLCRMA, and that the program has met all substantive requirements of the SLCRMA and the regulations adopted pursuant thereto;

d. in reviewing a local program for consistency with the state guidelines the secretary, acting jointly with the secretaries of the Department of Natural Resources and the Department of Wildlife and Fisheries, may make reasonable interpretations of the state guidelines, insofar as they affect that particular program, which are necessary because of local environmental condition or user practices. Local programs that may be inconsistent in part with the state guidelines may be approved notwithstanding the conflicts if the secretaries find that:

i. the local environmental conditions and/or user practices are justified in light of the goals of Act 361, (SLCRMA) the objectives of the LCRP, and the policies of the state guidelines;

ii. approval would result in only minimal and inconsequential variance from the objectives and policies of the Act and the guidelines; and

iii. the local program provides special methods to assure that the conflicts remain minimal and inconsequential;

e. the local program shall become effective when approved by the secretary and officially adopted by the local government.

E. Modifications

1. Any significant proposed alteration or modification to an approved local program shall be submitted to the secretary for review and approval along with the following:

a. a detailed description of the proposed change;

b. if appropriate, maps of sufficient scale and detail depicting geographically how the program would be changed;

c. an explanation of how the proposed change would better accommodate local conditions and better serve to achieve the objectives of the state program and the local program;

d. a resolution from the local government expressing approval of the modification as submitted and its intent to implement the change subsequent to state approval;

e. all parish ordinances relevant to the proposed modification;

f. any comments from governmental units that may be affected by the proposed modification;

g. the record of the public hearing on the proposed modification, including any written testimony or comments received; and

h. documentation that the parish has provided a full opportunity for governmental and public involvement in the development of the proposed modification.

2. Significant alterations or modifications shall be reviewed and approved pursuant to Subsection B, C, and D above. They must be consistent with the guidelines and the state program and meet all pertinent substantive and procedural requirements.

3. An alteration or modification shall become effective when approved by the secretary and officially adopted by the local government. If a proposed alteration or modification is not approved, the provisions of the previously approved program shall remain in effect unless specifically rejected by the governing body of the parish.

F. Periodic Review of Programs

1. Local governments shall submit an annual report on the activities of an approved local program. This annual report shall include:

a. the number, type, and characteristics of applications for coastal use and other permits;

b. the number, type, and characteristics of coastal use and other permits granted, conditioned, denied, and withdrawn;

c. the number, type, and characteristics of permits appealed to the courts;

d. results of any appeals;

e. a record of all variances granted;

f. a record of any enforcement actions taken;

g. a description of any problem areas within the state or local program and proposed solutions to any such problems;

h. proposed changes in the state or local program.

2. The administrator shall from time to time, and at least every two years, review the approved local programs to determine the extent to which the implementation of the local program is consistent with and achieving the objectives of the state and local programs.

3. Should the secretary determine that any part of the local program is not consistent with the state program or is not achieving its stated objectives or is not effective, he shall notify the local government and recommend changes and modifications which will assure consistency with, and achievement of, the objectives of the overall coastal program or improve the efficiency and effectiveness of the local program.

4. If the local government fails to give official assurance within one month after receipt of the secretary's notice that it intends to modify the local program in a timely manner to conform to these recommendations, or thereafter fails to make the necessary changes within three months, the secretary may, after public notice, revoke approval of the local program. In such an event the local government shall no longer have the authority to permit uses of local concern or otherwise carry out the functions of an approved program and will lose eligibility to receive management funds other than those funds appropriate and necessary to make the necessary changes. If and when the secretary determines that the local program has been appropriately modified to meet his recommendations pursuant to Subsection B above, he may, after public notice, reinstate approval.

G. Funding of Local Programs

1. All funds provided to local governments by the department for program development or implementation shall be subject to the following.

a. Any state or federal funds provided to local governments for development or implementation of approved local program shall be by contract with the department. Any such financial assistance shall be subject to these rules and any applicable federal requirements.

b. Such financial assistance shall be on a matching fund basis. The required local match shall be determined by the secretary.

c. Eligibility of a local government for such financial assistance shall be determined by the administrator pursuant to these rules and the contractual requirements of the department.

d. Local programs shall receive an equitable share of the total federal money received by the department from the Office of Coastal Zone Management for Section 306 [of the federal Coastal Zone Management Act, as amended] implementation.

2. Planning and development assistance funding shall be subject to the following.

a. Funding for planning and development of local programs shall be available. The level of such funding shall be at the discretion of the administrator and as provided for herein. A base level of funding will be made available to each parish in the coastal zone which does not have an approved program. Any unutilized allocated funds will be available for use by other parishes at the discretion of the administrator for special planning and development projects.

b. To be eligible to continue receiving planning and development assistance, the local government must be making substantial progress toward finalization of an approvable local program.

c. Planning and development funds may only be used to plan for and develop those elements of a local program required by Subsections B and C of these rules and the SLCRMA.

d. Planning and development assistance will be provided by the department for two years from the date of

federal approval of the state program or until a parish receives an approved local program, whichever is sooner.

3. The department will make funds available to local governments for costs incurred in applying for approval from the department, including printing and advertising, holding required public hearings and making copies of the local program available to governmental bodies and the general public.

4. Implementation assistance funding shall be subject to the following.

a. Funding for implementation of a local program shall be available after approval of the local program by the department. A local program shall be eligible for such assistance only so long as it continues to be an approved program.

b. The administrator shall establish and modify, as appropriate, a reasonable allocation formula utilizing objective criteria regarding the coastal zone of the parish, including:

i. population;

ii. total surface area;

iii. wetland area;

iv. number of permits; and

v. length of interface between urban and agricultural areas and wetland areas.

c. Each parish with an approved program shall be assured of a base level of funding, with additional funding based upon the allocation formula. Any unutilized implementation funds will be available, at the discretion of the administrator, for use by other parishes for special planning, implementation or management projects.

d. Implementation funds may only be used to implement the approved local program, carry out planning for or development of approvable alterations or modifications in the local program, and to update or revise the data base utilized by the local program.

H. Written Findings. All findings and determinations required by these rules shall be in writing and made part of the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Subchapter E. Hearings

§727. Public Hearings

A. Scope. This regulation is applicable to all public hearings pursuant to the SLCRMA. All such public hearings shall be nonadjudicatory public proceedings conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed action which affords to the public the opportunity to present their views and opinions on such action.

B. Public Notice

1. Public notice shall be given at least 30 days in advance of any public hearings. Notice shall be sent to all persons requesting notices of public hearings and shall be posted in all governmental bodies having an interest in the subject matter of the hearing. Such notice may be limited in area consistent with the nature of the hearing.

2. The notice shall contain the time, place, and nature of hearing; and the location of materials available for public inspection.

C. Time and Place. In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the interested public.

D. Presiding Officer

1. The governmental body holding the hearing shall designate a staff member to serve as presiding officer. In cases of unusual interest the administrator shall have the power to appoint such person as he deems appropriate to serve as the presiding officer.

2. The presiding officer shall establish a hearing file consisting of such material as may be relevant or pertinent to the subject matter of the hearing. The hearing file shall be available for public inspection.

E. Representation. At the public hearing, any person may appear on his own behalf, or may be represented by counsel or by other representatives.

F. Conduct of Hearings

1. Hearings shall be conducted by the presiding officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the appropriate decision. Written statements may be presented any time prior to the time the hearing file is closed. The presiding officer may afford participants an opportunity for rebuttal.

2. The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

3. Cross-examinations of witnesses shall not be permitted.

4. All public hearings shall be recorded verbatim. Copies of the transcript will be available for public inspection and purchase at the office of the administrator.

5. All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion for reasons of redundancy, be received in evidence and shall constitute a part of the hearing file.

6. The hearing file shall remain open for a period of 10 days after the close of the public hearing for submission of written comments or other materials. This time period may be extended for good cause.

7. In appropriate cases, joint public hearings may be held with other state, federal, or local agencies, provided the procedures of those hearings are generally consistent with the requirements of this regulation.

8. The procedures in Paragraphs 4 and 6 of this Subsection may be waived by the presiding officer in appropriate cases.

G. Filing of Transcript of the Public Hearing. The testimony and all evidence received at the public hearing shall be made part of the administrative record of the action. All matters discussed at the public hearing shall be fully considered in arriving at the decision or recommendation. Where a person other than the primary decision making official serves as presiding officer, such person shall submit a report summarizing the testimony and evidence received at the hearing to the primary decision making official for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Subchapter F. Special Areas

§729. Special Areas

A. General. This Section shall establish procedures for the designation, utilization and management of special areas and for establishing guidelines and priorities of uses for each area.

B. Nominations

1. An area may be nominated for designation as a special area by any person, local government, state agency, or the secretary.

2. Areas may be nominated for any of the purposes set forth in §214.27 of the Act, or for similar purposes, provided that such areas:

a. are in the coastal zone;

b. have unique and valuable characteristics;

c. require special management procedures different from the normal coastal management process; and

d. are to be managed for a purpose of regional, state, or national importance.

3. Nominations shall consist of:

a. a statement regarding the area nominated, including, for example, its unique and valuable characteristics, its existing uses, the environmental setting, its history, and the surrounding area;

b. a statement of the reasons for the nomination, such as any problems needing correction, anticipated results, need for special management, and need for protection or development;

c. a statement of the social, economic, and environmental impacts of the nomination;

d. a map showing the area nominated;

e. a statement as to why the area nominated was delineated as proposed and not greater or lesser in size or not in another location;

f. proposed guidelines and procedures for management of the area, including priorities of uses;

g. an explanation of how and why the proposed management program would achieve the desired results;

h. a statement as to how and why the designation of the area would be consistent with the state coastal management program and any affected local programs; and

i. a statement as to why and how the designation would be in the best interest of the state.

C. Administrative Review

1. The secretary shall review proposals for their suitability and consistency with the coastal management program.

2. If he finds that a proposal is suitable and consistent with the coastal management program, the secretary may, with the advice and assistance of affected local programs, prepare a draft "Proposal for a Special Area." The proposal shall consist of the delineation of the area to be designated, the guidelines and procedures for management, and priorities of uses.

3. Public notice announcing a public hearing on the proposal shall be given and published in a newspaper of general circulation in the affected parishes. Copies of the proposal may be obtained from the secretary upon request and copies shall be made available for public review at the offices of the secretary, offices of local programs, and at public libraries in affected parishes. Notice and copies of the proposals shall be sent to appropriate governmental bodies.

4. After the public hearing and consideration of all comments received at or before the hearings, the secretary shall determine whether to designate the area proposed, or a part of it or an approximately similar area, and adopt the guidelines and procedures for management and priorities of uses. Public notice of the secretary's decision shall be given.

D. Gubernatorial Establishment. The governor may designate special areas and establish the guidelines and procedures for management and priorities of uses applicable in such areas.

E. Establishment of Special Area. If the state coastal zone program has not yet received federal approval, the special area designation and its management program shall go into effect upon the order of the governor. If the coastal zone program has been federally approved, the special area designation and its management program shall go into effect after federal approval of the special area as an element or amendment of the state's coastal zone program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Chapter 8. Coastal Protection, Conservation, and Restoration

Subchapter A. Coastal Restoration Project Construction Ranking

§801. Scope

A. This Chapter prescribes coastal restoration project construction ranking and cost-sharing standards and criteria based upon anticipated habitat benefits per Trust Fund (Wetlands Conservation and Restoration Trust Fund, as defined in R.S. 49:213.7) Dollar expended over the project life.

B. This Chapter shall apply only to those coastal restoration projects which are not joint ventures by the state and federal government and which are included in the coastal vegetated wetlands conservation and restoration plan, and any amendments thereto, adopted and implemented in accordance with R.S. 49:213.1 et seq. and 49:214.1 et seq., respectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992).

§803. Definitions

Cost-Effectiveness Ranking—the ranking established by dividing the cumulative habitat units of benefits by the aggregate trust fund dollar anticipated to be expended over the life of the proposed coastal restoration project. The cost-effectiveness ranking quotient shall be an indexing number used for assigning coastal restoration project construction priority.

Cost-Sharing—a contribution, either monetary, in-kind, and/or both, by a local sponsor for a coastal restoration project from any non-trust-fund source for any or all of the following: design, construction, operation, maintenance, and monitoring, excluding feasibility, over the anticipated life of a particular project.

Cumulative Habitat Units of Benefit—the total habitat units "with project" minus the total habitat units "without project."

Habitat Units—the sum of the value(s) derived by multiplying the suitability index (Sl) value by the acreage for each coastal wetland type of the area of impact ascribable to the proposed project, as defined in Wetland Value Assessment Methodology employed for coastal restoration project evaluation and established in accordance with the Coastal Wetlands Planning, Protection, and Restoration Act of 1990, Public Law Number 101-646,104 Stat. 4779-4783, (1990).

Suitability Index—a unitless number ranging from 0 to 1 wherein 0 represents a low value for fish and wildlife habitat and 1 represents a high value for fish and wildlife habitat. The suitability index for an area shall be determined by using the Wetland Value Assessment Methodology employed for coastal restoration project evaluation and established in accordance with the Coastal Wetlands Planning, Protection, and Restoration Act of 1990, Public Law Number 101-646,104 Stat. 4779-4783, (1990).

Total Habitat Units with Project—the sum of the projected habitat units calculated over a time period equal to the life expectancy of the proposed project were it implemented.

Total Habitat Units without Project—the sum of the projected habitat units calculated over a time period equal to the life expectancy of the proposed project, were it not implemented.

Trust Fund Dollars—present value in 1990 allures from the Wetlands Conservation and Restoration Trust Fund, as defined in R.S. 49:213.7, of design and construction costs (excluding feasibility costs), plus operation, maintenance, and monitoring costs, minus cost sharing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992).

§805. Ranking

A. Coastal restoration projects shall be constructed according to their cost-effectiveness ranking. In comparing projects, those projects with higher cost-effectiveness ranking indices shall have a correspondingly higher construction priority. In the event that two or more projects have identical cost-effectiveness rankings, projects benefiting the greatest number of coastal wetland acreage shall have a correspondingly higher construction priority. Coastal wetland acres shall include only those coastal wetland types as defined in Wetland Value Assessment Methodology employed for coastal restoration project evaluation and established in accordance with the Coastal Wetlands Planning, Protection, and Restoration Act of 1990, Public Law Number 101-646, 104 Stat. 4779-4783. (1990). Upon the initiation of the development of plans and specifications for the construction of a project, a project shall be removed from the construction ranking list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992).

§807. Cost-Sharing

A. Feasibility. The state shall bear 100 percent of the feasibility costs of all coastal restoration projects.

B. Design and Construction. In all cases in which the local sponsor is able to identify and secure any appropriate non-trust-fund source(s) to fund the design and/or construction of a coastal restoration project, the local

sponsor share of the design and/or construction costs may consist of any form and/or amount of cost-sharing. The state share of the design and/or construction costs shall consist of any form and/or amount of cost-sharing sufficient to meet the remaining design and/or construction costs of the project for which the local sponsor is unable to cost-share.

C. Operation, Maintenance, and Monitoring

1. In all cases in which the local sponsor is able to identify and secure any appropriate non-trust-fund source(s) to fund the operation, maintenance, and/or monitoring costs of a coastal restoration project, the state share of said costs shall consist of any form of cost-sharing not to exceed 75 percent of the said costs of the project for which the local sponsor is unable to cost-share and the local sponsor share of said costs shall consist of any form of cost-sharing not less than 25 percent of said costs from a non-trust-fund source.

2. In all cases in which the local sponsor is unable to identify and secure any appropriate non-trust-fund source(s) to cost-share the operation, maintenance, and/or monitoring costs of a coastal restoration project, the state shall bear 100 percent of these costs for which the local sponsor is unable cost-share.

D. The state shall accept any lawful cost-sharing, as defined in §803 and shall adjust the project's cost-effectiveness ranking accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992).

Subchapter B. Oyster Lease Acquisition and Compensation Program

§851. Purpose and Authority

A. This Subchapter sets forth the rules for the acquisition of and compensation for oyster leases by the department when necessary for purposes of coastal protection, conservation, or restoration. The department may acquire oyster leases, in whole or in part, for such purposes on behalf of the state to the extent that the leases are or may be directly affected by the dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, or restoration project.

B. These regulations are adopted pursuant to Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950, including the Oyster Lease Acquisition and Compensation Program under R.S. 56:432.1 and the general authority of the department under Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006).

§853. Construction and Usage

A. The following shall be observed regarding the construction and usage of these regulations.

1. Unless otherwise specifically stated, the singular form of any noun includes the plural and the masculine form of any noun includes the feminine.

2. Unless otherwise specifically stated, all references to *Section* are to Sections of this Subchapter.

3. Any reference to *days* in this Subchapter shall refer to calendar days.

4. The day of the event from which a designated time period begins to run shall not be included in the computation of a period of time allowed or prescribed in these regulations. The last day of the period is to be included in the computation of a period of time allowed or prescribed in these regulations, unless it is a legal holiday, in which case the period runs until the end of the next day that is not a legal holiday. Nonetheless, the effective date of acquisition shall be on the date set by the department pursuant to these regulations and R.S. 56:432.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006).

§855. Definitions

A. The following shall apply for purposes of these regulations.

Affected Acreage—the portion of an affected lease located within a direct impact area of a project.

Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a direct impact area of a project.

Coastal Protection, Conservation, or Restoration—any project, plan, act, or activity for the protection, conservation, restoration, enhancement, creation, preservation, nourishment, maintenance, or management of the coast, coastal resources, coastal wetlands, and barrier shorelines or islands, including but not limited to projects authorized under any comprehensive coastal protection master plan or annual coastal protection plan issued pursuant to Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

Department—the Department of Natural Resources, its secretary, or his designee.

Direct Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a project is planned to occur or has occurred.

DWF—the Department of Wildlife and Fisheries, its secretary, or his designee.

Effective Date of Acquisition—the date set by the department in accordance with these regulations and R.S. 56:432.1 upon which the affected lease or affected acreage shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance.

Leaseholder—the last lessee of record, or his designee, of an oyster lease let by DWF pursuant to R.S. 56:425, et seq., as identified in records provided and maintained by DWF.

Marketable Oysters—includes both seed and market-size oysters as defined by DWF.

Oyster Resource Survey—any survey or sampling to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

Potential Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, and restoration project is projected, possible, or estimated to occur.

Potentially Affected Acreage—the portion of a lease located within the potential impact area of a project.

Potentially Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a potential impact area of a project.

Project—any project, plan, act, or activity recognized by the department as relating to coastal protection, conservation, or restoration.

Secretary—the Secretary of the Department of Natural Resources or his designee, unless otherwise specifically stated in this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2089 (November 2006).

§857. Notification to Leaseholder of an Oyster Resource Survey; Procedures and Protocols for an Oyster Resource Survey

A. When appropriate, the secretary shall determine and delineate the potential impact area of a project and in making such decision may consult with the government agency or any public or private entity responsible for the project.

B. When the secretary determines that an existing oyster lease identified in records provided and maintained by DWF may, in whole or in part, be located within the direct impact area of a project, the secretary may conduct an oyster resource survey.

C. The secretary shall notify the leaseholder in writing at least 15 days prior to the oyster resource survey of the potentially affected acreage or potentially affected lease. The notification shall, at a minimum, include the following:

1. a brief description of the coastal protection, conservation, or restoration project, and a plat or map depicting the project and potentially affected lease or potentially affected acreage;

2. a copy of these regulations, R.S. 56:424, and R.S. 56:432.1;

3. the date and time of the oyster resource survey;

4. the name of and contact information for the person conducting the oyster resource survey;

5. a statement that the leaseholder or his designee may accompany the person conducting the oyster resource survey;

6. a statement that the state may acquire the potentially affected lease or potentially affected acreage to be surveyed or sampled, and if so, that the leaseholder will be compensated for any acquired lease or portion thereof in accordance with R.S. 56:432.1 and this Subchapter;

7. the name of and contact information for a person at the department to direct all inquiries regarding the project and the potentially affected lease or potentially affected acreage;

8. a statement that the leaseholder may provide to the department, through the contact person listed in the notice, any reasonably confirmable data or other information relevant to a determination of the compensation for any potentially affected lease or potentially affected acreage, within 60 days after the actual date of the oyster resource survey conducted pursuant to this Subchapter. Failure to provide such data or information within the specified time period may preclude consideration of such data by the secretary, the department, the person conducting the oyster resource survey, or the appraiser appointed thereby;

9. a statement that if the person conducting the oyster resource survey is unable to conduct the survey on the date provided in the notice, that such person will provide notice to the leaseholder of the new survey date and time by appropriate and reasonable means;

10. a statement that the oyster resource survey is to be conducted in the manner set forth under §857.E of this Subchapter; and

11. a statement that the department, the state of Louisiana, political subdivisions of the state, the United States, or any agency, agent, contractor, or employee of any of these entities is not subject to any obligation, responsibility, or liability in relation to or resulting from any surveying or sampling of any oyster lease, information provided to any leaseholder in relation to any surveying or sampling of any oyster lease, the timing of any acquisition of any part of any lease by the state pursuant to R.S. 56:432.1, the lack of acquisition of any part of any lease except as provided by R.S. 56:432.1, or any report pursuant to R.S. 56:432.2 or otherwise.

D. Any written notification from the secretary or the department to the leaseholder of a potentially affected lease or potentially affected acreage in accordance with this section shall be deemed legally sufficient if sent by certified United States mail, postage pre-paid, return receipt requested, or hand delivered, to the last address furnished to DWF by the leaseholder on the date of issuance of notice.

E. Oyster Resource Survey Procedures and Protocol

1. The intent of the oyster resource survey is to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

2. Assessment Procedure

a. Should the secretary elect to obtain an oyster resource survey of a potentially affected lease or potentially affected acreage, he may select the person(s) to conduct the oyster resource survey considering all relevant criteria, including but not limited to prior experience, prior performance, demonstrated expert knowledge in the field of oyster biology, and the ability to perform concurrent task orders while maintaining high quality work. The person(s) so selected shall be contracted with by the department pursuant to R.S. 39:1481, et seq., or other applicable public contract law, and shall have the following minimum qualifications:

i. a college degree in biological science, or prior acceptance by a Louisiana federal or state court as an expert witness in the field of oyster biology or oyster ecology; and

ii. five years of professional experience conducting oyster lease surveys and standing oyster crop analyses.

b. Samples should be taken at a minimum within the area of a potentially affected lease delineated by the secretary as the potential impact area of the project for which the oyster resource survey is being conducted.

c. A written assessment of the results of the oyster resource survey shall be prepared.

d. Oyster resource survey methods and procedures used should be stated and identified in the written assessment.

e. Information and data from the oyster resource survey should be compiled, analyzed, and presented in tables, charts, and in a written format along with scale maps indicating the location of the oyster leases in relation to the proposed project, location of sample sites, number and size of both live and dead oysters, oyster size frequency distribution, mortality rates per group, and photographs of oyster samples.

f. An original copy of the written assessment shall be provided to and retained by the department, which may use it in accordance with the appraisal and valuation procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:424, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2090 (November 2006).

§859. Appraisal

A. The secretary shall determine or delineate the direct impact area of a project, and in making such decision, may consult with any public or private entity responsible for the project.

B. Should the secretary determine that an existing oyster lease identified in records provided and maintained by DWF is, in whole or in part, located within the direct impact area of a project, the secretary shall obtain an appraisal of the affected lease or affected acreage.

C. When the secretary elects to obtain an appraisal of an affected lease or affected acreage, he shall select the appraiser considering all relevant criteria, including but not limited to the following:

1. prior performance; education; experience in valuation of oyster leases; experience in valuation of unique properties and unusual estates; experience in valuation of various land classes; demonstrated expert knowledge in the field of real property appraisal; and, the ability to perform concurrent tasks orders while maintaining high quality work;

2. the appraiser so selected shall be contracted with by the department pursuant to R.S. 39:1481 et seq., or other applicable public contract law, and shall have a current certification as a Louisiana certified general real estate appraiser; professional designation in the field of appraisal; and, five or more years professional experience conducting real property appraisals.

D. The appraiser shall estimate the fair market value of the affected lease or affected acreage to be acquired according to accepted appraisal methods, which may include analysis of comparable sales of other leases. The appraiser may also take into consideration any reasonably confirmable data or information supplied by any person or obtained through the appraisal process, and any data or information obtained through the oyster resource survey conducted in accordance with §857.

E. A written appraisal shall be prepared by the appraiser, estimating the fair market value of the affected lease or affected acreage, and explaining the valuation methodology. An original of the appraisal and a copy of all documents used to develop the appraisal shall be provided to the department, which may use it pursuant to the procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2091 (November 2006).

§861. Determination of Compensation

A. The secretary shall determine the compensation for any affected acreage to be acquired as follows.

1. If the department provides a time period of one year or more between issuance of a notice of acquisition pursuant to §863 and the effective date of acquisition, then compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §859.

2. If the department provides a time period of less than one year between issuance of a notice of acquisition pursuant to §863 and the effective date of acquisition, the compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §859 plus the value of such non-removable marketable oysters on the affected acreage, if any, as determined by the department, based upon reasonably confirmable data. The determination of value shall take into account the number of sacks of marketable oysters per acre, suitable acreage, natural mortality, current market price, and harvest cost.

3. Data for estimation of the value of non-removable marketable oysters shall be determined from the written assessment derived from the oyster resource survey conducted in accordance with §857. The department may also take into consideration any reasonably confirmable data or information supplied timely by any person in accordance with §857.

4. The appraiser and the department shall consider any reasonably confirmable data or other information supplied to the department by the leaseholder following the oyster resource survey conducted in accordance with §857. The department or the appraiser may disregard any information or data not submitted timely pursuant to §857.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2091 (November 2006).

§863. Notification to Leaseholder of Acquisition and Compensation

A. Should the secretary determine that an existing oyster lease issued by DWF is located within the direct impact area of a project and the project is necessary and proper for coastal protection, conservation, or restoration, the secretary may acquire the affected acreage on behalf of the state in accordance with this Section.

B. Acquisition shall be implemented by issuance of a notice of acquisition. Notice of acquisition may be mailed or delivered to the leaseholder no sooner than 60 days after the completion of the oyster resource survey conducted in accordance with §857. The notice shall be issued in writing to the leaseholder by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address furnished to DWF by the leaseholder on the date of issuance of notice. A copy of such notice shall be recorded in the conveyance records of any parish in which the affected acreage to be acquired or the affected lease is located.

C. Such notice of acquisition shall, at a minimum, include:

1. a description specifying affected acreage, or portion thereof, being acquired;

2. the effective date of acquisition;

3. a brief description of the coastal protection, conservation, or restoration project for which the acreage is being acquired;

4. a plat or map depicting the project and the affected lease or affected acreage to be acquired;

5. a copy of these regulations and R.S. 56:432.1;

6. a statement that the department will acquire the acreage described in the notice of acquisition, and that such acquisition shall automatically occur on the date specified in the notice;

7. a statement that the leaseholder retains full use and possession of the affected acreage to be acquired until the effective date of acquisition, and may, at his sole risk and expense, harvest any oysters or take any other action permitted under the affected lease until the effective date of acquisition;

8. a statement that the acquisition will be effective regardless of whether the leaseholder actually received the notice of acquisition;

9. a statement that the affected lease shall continue in full force and effect as to all remaining acreage under the lease other than the acquired acreage (in cases where only part of the affected lease is being acquired);

10. a statement that lease payments as otherwise required by R.S. 56:428 or 429 shall no longer be payable as to the acquired oyster lease acreage for the calendar year after the date on which the notice of acquisition is issued; but that payment must still be paid as to any remaining acreage under the lease if the lease is acquired only in part;

11. a statement that the leaseholder will either be allowed a period of one year or more from the date of issuance of notice of acquisition herein in which to remove any and all marketable oysters from the affected lease, at his sole risk and expense, and that no compensation shall be allowed for oysters so removed or removable, or if the department states an effective date for the acquisition that is less than one year after the date of issuance, a statement that the compensation for the acreage to be acquired includes compensation for the non-removable marketable oysters as part of the attached acquisition payment;

12. a determination of compensation, stating the dollar amount that the department has determined in accordance with these regulations and R.S. 56:432.1 to be paid for the acquired acreage and the appraised value of the acquired acreage. If compensation is being paid for non-removable marketable oysters, a statement of the value thereof is also to be included;

13. a check, attached only to a notice of acquisition sent to the leaseholder's last address as furnished to DWF by the leaseholder on the date of issuance of notice, in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, in the name of the leaseholder of record in accordance with the records of DWF on the date of issuance of notice of acquisition herein;

14. a statement that acceptance or negotiation of the attached check (or draft) does not preclude a claim for additional compensation as provided in these regulations and R.S. 56:432.1;

15. if any amount due on a recorded lien or encumbrance has been withheld from the check for compensation, a statement indicating the name of the holder of the recorded lien or encumbrance, the amount withheld, and that payment of said amount has been made by the department to that holder;

16. a statement that the leaseholder may seek an administrative hearing in writing through the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment, pursuant to these regulations and R.S. 56:432.1, as to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper or whether the compensation issued by the department satisfied the regulations under this Subchapter, and that administrative or judicial review may be permissible, but that the procedures stated by law and these regulations must be followed or such right of review may be lost or impaired; and

17. a statement that a request for administrative or judicial review shall have no effect upon the validity of the acquisition of the acquired acreage, but only the compensation payable to the leaseholder, unless review is sought timely and the leaseholder proves that the project or action for which the acreage was acquired does not further coastal protection, conservation, or restoration.

D. Before issuing any notice of acquisition, the department shall make a reasonable attempt to determine whether any amount is due on a recorded lien or encumbrance in relation to any oyster lease covering the acreage to be acquired. The holder of the lien or encumbrance and the leaseholder may negotiate to allocate the compensation to be paid under the notice of acquisition by written agreement among them. Any such written agreement must fully release and indemnify the department from any claim in relation to the acreage to be acquired or the compensation for such acreage.

1. If no such written agreement is provided on or before the date when the department issues the notice of acquisition, the department shall withhold the full amount of all liens or encumbrances covering any of the acreage to be acquired, up to the full amount of the compensation determined by the department. If the department timely receives such a written agreement, the department shall withhold the amount agreed by the lienholder or encumbrance holder. A statement of the name of the holder and the amount withheld in relation to each lien or encumbrance shall be issued to the leaseholder as part of the notice of acquisition.

2. Should the amount of compensation to be paid for the acquired acreage be insufficient to pay the entirety of the lien or encumbrance, any lien or encumbrance shall be paid in order of legal preference and all holders of any remaining or unpaid lien or encumbrance shall be notified of the reason for non-payment or partial payment and issued a copy of the notice of acquisition.

3. The department shall forward payment in the full amount of any withholding to the holder of the lien or encumbrance by certified United States mail, return receipt requested, postage pre-paid, or by pre-paid receipted courier or delivery service, or hand delivery, to the last address on file with the secretary of state, if any, or to any address provided to the department or DWF by the lien or encumbrance holder. A copy of the notice of acquisition and determination of compensation, showing the lien or encumbrance and the withholding in relation thereto, shall be attached to the payment.

4. If the department is unable to make delivery of the payment by these means, the department shall transfer funds in the full amount of the withholding to a trust account from which it may be drawn for the benefit of the holder of the lien or encumbrance by joint agreement of the holder and the department, upon request of the lienholder of record on the date the notice of acquisition is initially issued.

5. If funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151 et seq., at the sole discretion of the secretary.

E. If the department attempts issuance of notice of acquisition, determination of compensation, and the check pursuant to §863.C, at least once, and is unable to make delivery of the notice to the leaseholder thereby, the department shall re-issue the notice and the determination of compensation by certified United States mail, return receipt requested, to the leaseholder at his address on file with DWF on the date of the re-issuance. In such event, the department shall also publish a summary of such notice identifying the affected lease and acreage to be acquired, stating the effective date of the acquisition and providing a contact person at the department for all inquiries regarding the acquisition, in the official journal for all parishes in which any part of the acreage to be acquired is located. In addition, the following procedures shall apply.

1. If a Notice of Acquisition is re-issued under this Subsection, no check shall be attached to the re-issued notice. Instead, payment in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, shall be transferred into a trust account

from which it may be drawn for the benefit of the leaseholder by joint agreement of the leaseholder and the department, upon request of the leaseholder listed with DWF on the date the notice of acquisition is initially issued. If said funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act as set forth in R.S. 9:151 et seq., at the sole discretion of the secretary.

2. A re-issued notice shall include a statement that compensation for the acquisition has been deposited into a trust account, and that a contact person at the department designated in the re-issued notice can assist the leaseholder in withdrawing said funds from the trust account. The re-issued notice shall also include a statement that any funds in the trust account remaining unclaimed after five years shall be declared abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151 et seq.

F. Upon the effective date of acquisition of affected acreage as stated in the notice of acquisition, possession of the affected acreage acquired pursuant to the notice of acquisition, issued in accordance with this section shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance, and regardless of whether the leaseholder actually receives the notice of acquisition.

G. No lease shall be granted for any water bottom for which any lease was previously acquired by the state for coastal protection, conservation, or restoration, unless the secretary of DWF determines that leasing would otherwise be appropriate under the provisions of Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950 and the secretary of DNR affirms that the water bottom is not necessary for coastal protection, conservation, or restoration, as provided by and in accordance with the provisions of R.S. 56:425(E). Unless this determination has been made prior to issuance of the lease, a lease of water bottom for which a lease was previously acquired shall be null and void for such water bottom and shall be of no force or effect. No person shall have any claim against either secretary, either department, the state of Louisiana, its political subdivisions, the United States, or any agency, agent, contractor, or employee thereof or any other person in relation to the nullity of such lease. The determination of whether the water bottom sought to be leased is not necessary for coastal protection, conservation, or restoration shall be at the sole discretion of the secretary of DNR, upon consideration of existing, planned, projected, or reasonably foreseeable projects or other actions needed for coastal protection, conservation, or restoration.

H. Nothing in these regulations shall be construed to require the secretary to engage in or perform any project or other action for coastal protection, conservation, or restoration or any oyster resource survey, appraisal, or valuation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:425, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2092 (November 2006).

§865. Administrative Review

A. A leaseholder of an oyster lease acquired, in whole or in part, in accordance with these regulations and R.S. 56:432.1 may seek an administrative hearing through the department.

1. Any such adjudication shall be limited to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper, or whether the compensation issued by the department satisfies the rules and regulations under this Subchapter.

2. Any leaseholder whose lease is not acquired, but upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration has occurred, may also seek an administrative hearing through the department under this section to determine if acquisition of such oyster lease acreage would be proper.

B. A leaseholder's request for an administrative hearing under this section shall be requested in writing and sent to the department at the following address: Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

1. A written request for adjudication under this Section must be received by the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment to which the request pertains. However, a request for adjudication may be submitted to the department within two years after completion of the project for which acreage was acquired, if and only if, the leaseholder establishes that notice of the acquisition, determination of compensation, or payment was not issued as required by R.S. 56:432.1 or §863, or the request for adjudication seeks review of the lack of acquisition of leased acreage upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration has occurred.

a. A request for adjudication received after the aforementioned deadlines, as applicable, is not timely and shall be denied.

b. A request for adjudication is deemed timely "received" when the request is mailed on or before the due date. If the papers are received by mail on the first legal day following the expiration of the delay, there shall be a rebuttable presumption that they are timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown by an official United States postmark or by official receipt or certificate from the United States

Postal Service or a bona-fide commercial mail service such as Federal Express or United States Parcel Service, made at the time of mailing which indicates the date thereof.

2. A request for an administrative hearing shall, at a minimum, include the following:

a. identification of the notice of acquisition to which the request pertains, or if no notice has been issued, identification of the affected lease and affected acreage to which the request pertains;

b. a statement of the relief requested, identifying the specific issue or point as to which adjudication is sought;

c. a statement of the reasons such relief is requested, and the facts upon which the request for relief is based;

d. the name and address to which the department and the Division of Administrative Law will send all communications regarding the request for administrative review. Neither the department nor the Division of Administrative Law have any obligation to deliver any communications or other notices regarding the request to any person or address other than the address listed in the request or any amendment thereto. If no person is listed, the department and the Division of Administrative Law shall deliver all communications or notices to the last address on file for the leaseholder with DWF, and shall have no obligation to deliver communications or notices to any other person or address.

3. The department shall promptly submit a request for adjudication to the Division of Administrative Law.

C. Any adjudication hereunder shall be governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950 et seq., and the Division of Administrative Law Act (DALA), R.S. 49:991 et seq., unless such procedures are inconsistent or in conflict with the provisions of this Subchapter or R.S. 56:432.1.

D. The leaseholder may provide to the Division of Administrative Law, the department, and any other parties, including any holder of any lien or encumbrance or any other leaseholder claiming an interest in the acreage at issue, on or before the date of the adjudication, any reasonably confirmable data or other information that the leaseholder believes should be considered by the Division of Administrative Law in conducting the administrative review of the determination of the department. The Division of Administrative Law shall consider any reasonably confirmable data or information timely provided to the department by the leaseholder or any other person pursuant to §863 and R.S. 56:432.1. The Division of Administrative Law may disregard any information or data that is not submitted timely pursuant to this Subchapter.

E. The final decision of the Division of Administrative Law shall be issued to the leaseholder, in writing by certified mail, at his address on file with DWF on the date of issuance thereof, or at such other address as may be specified in the request for adjudication; and the Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

F. A request for adjudication shall have no effect upon the validity of the acquisition of the acreage acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the acquisition may be found invalid if adjudication is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration. If the acquisition is invalidated, the full possession of the oyster lease acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

G. If the Division of Administrative Law declares in a final decision that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department, subject to Constitution Article 12, Section 10, shall issue a check or draft to the leaseholder for such additional amount, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication, within 60 days after issuance of the final decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2094 (November 2006).

§867. Judicial Review

A. A leaseholder may seek judicial review of the final decision of the Division of Administrative Law under §865 in accordance with R.S. 56:432.1(D), based solely on the administrative record and, except as otherwise provided in these rules or by R.S. 56:432.1, governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950 et seq. and the Division of Administrative Law Act (DALA), R.S. 49:991 et seq.

B. Proceedings for judicial review may be instituted in accordance with R.S. 56:432.1(D) by filing a petition in the Nineteenth Judicial District Court for the Parish of East Baton Rouge within 60 days after issuance of the final decision of the Division of Administrative Law. No petition for judicial review may be filed, and any such petition is premature, unless adjudication has been timely sought and all administrative remedies have been exhausted. Copies of the petition shall be served upon the secretary and on all parties of record.

C. A request for judicial review shall have no effect upon the validity of the acquisition of any oyster lease acreage acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the

acquisition may be found invalid if review is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration. If the acquisition is invalidated, the full possession of the acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

D. If the court declares in its judgment that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department may appeal the judgment in accord with R.S. 49:965 of the Administrative Procedure Act (APA). If the judgment is affirmed on appeal or no appeal is taken and subject to Constitution Article 12, Section 10, the department shall issue a check or draft to the leaseholder for such additional compensation as set forth in the original judgment or as may be modified or amended on appeal by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication no more than 60 days after the judgment becomes final and definitive under the provisions of Articles 2166 and 2167 of the Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2095 (November 2006).

§869. Reimbursement of Costs of Acquisition

A. The department may acquire any acreage under this Subchapter in relation to a project or action for coastal protection, conservation, or restoration performed or to be performed by or for the United States, any department, agency, board, commission, or political subdivision of the state, or any other public or private entity responsible for a project.

B. If the department acquires acreage under this Subchapter in relation to any project or action performed by any person or entity other than the department, such entity shall compensate the department for all costs incurred by the department, which are associated with the acquisition.

C. The costs for which reimbursement is due under this Subchapter includes but is not limited to costs of oyster resource surveys, appraisal, administrative, or other uses of department personnel or resources, payment for acquisition, and awards on administrative adjudications or judicial review.

D. The secretary may choose, at his sole discretion, to waive any part or all of the compensation that would otherwise be required under this Section. No person or entity shall have any right to such waiver, and the secretary shall have no obligation to make such a waiver. Waiver of any part of the compensation that would otherwise be required shall not affect any obligation to pay the remainder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:2095 (November 2006).

Chapter 9. Mineral Resources

Subchapter A. Mineral Leasing Policy

§901. Nomination

A. All parties desiring to nominate state owned land and waterbottom acreage or land owned by a state agency for which the State Mineral Board is being requested to issue a mineral lease must be registered with the Office of Mineral Resources on a one-time basis and have received an applicant ID number prior to submitting application for nomination.

B. The State Mineral Board has the authority to lease state owned lands and waterbottoms (see R.S. 30:124) and state agency owned land when requested to do so (see R.S. 30:153).

C. Application for nomination generally must include a diskette or CD-ROM containing a .dxf format of the proposed nominated tract polygon and a word.doc legal description of the same proposed nominated tract which must exactly match the tract polygon exploded from the .dxf as to X,Y coordinates along the polygon outline based on the Lambert Coordinate System; a paper copy of the plat and the legal description which each must match the .dxf exploded polygon and the word.doc; an electronic .pdf file of the plat; a letter of application completely and accurately filled out and a non-refundable check in the amount of the nomination fee as set forth in R.S. 9:301(2) (presently $400). More detailed requirements and certain exceptions are contained in the Leasing Manual available on the Department of Natural Resources (DNR) website at http://dnr.louisiana.gov/min/petlan/leasing.asp.

D. Nominated acreage for one nomination cannot exceed 2,500 acres of state owned lands and waterbottoms, in the aggregate, nor can the polygon outline of the nominated tract exceed 3 1/2 miles on a side, generally speaking, and must be given, where possible, in Lambert (X,Y) Coordinates at critical points along the boundary of the nomination polygon together with meets and bounds. Certain exceptions to this rule may be found in the leasing manual available on the DNR website as hereinabove set forth.

E. Advertising of nominations cannot occur more than 60 days prior to the date on which sealed bids are to be opened and must be done in the official state journal and the official parish journal wherein the nomination lies. The advertisement must contain a description of the land nominated, the time and place where the sealed bids shall be received and opened (which must be a state owned building in the state capital), a statement that the bid may be for the whole or any particularly described portion of the advertised land and may contain any other information deemed necessary by the mineral board [R.S. 30:126(A)]. The Office

of Mineral Resources also publishes a notice book each month of tracts available for bidding at the next month's mineral lease sale which is available to the public for a yearly subscription price of $120. A copy of the notice book is available for viewing on the DNR website.

F. A nomination may be withdrawn at the request of the applicant prior to its being advertised for lease; thereafter, the request for withdrawal must be reviewed by the State Mineral Board and approved for withdrawal at the regularly scheduled monthly State Mineral Board meeting.

G. For more detailed information on nominations abutting or enclosing existing, active state mineral leases, abutting the 3 mile boundary between state and federal waters, abutting neighboring states, nominations of particular tract kinds—such as wildlife management areas under the jurisdiction of the Department of Wildlife and Fisheries, Sixteenth Section lands, vacant state lands, school indemnity lands, state agency lands, tax adjudicated lands and other specialized types of acreage requiring type specific handling, see the leasing manual available on the DNR website as set forth hereinabove.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:254 (February 2008).

§902. Bidding

A. Bids for state mineral leases shall only be accepted from those parties who are registered prospective leaseholders (having a registration form containing current information regarding the bidder and a current certificate of good standing from the Secretary of State's office indicating prospective bidder is authorized to do business in the state of Louisiana) with the Office of Mineral Resources. Prospective leaseholders must maintain current their registration by notifying the Office of Mineral Resources of any change of information provided on the registration form and prior to January 31 of each year, if applicable, furnishing the Office of Mineral Resources with a copy of a certificate from the Secretary of State's Office indicating the party is in good standing and remains authorized to do business in the state of Louisiana.

B. Bids for state mineral leases shall be accepted at the place named in the advertisement no later than 12 noon on the Tuesday immediately preceding the Wednesday State Mineral Board meeting (unless specially noticed due to holidays).

C. Bids must be in a sealed envelope with the tract number for which the bid is being submitted legibly typed or written on the outside of the envelope. The bid packet shall contain the official state of Louisiana bid form as secured from the website form file, completely and accurately filled out and signed by an authorized agent of the bidder, a cashier's or certified check, or money order made out to the Office of Mineral Resources for the total amount of the cash bonus being bid (which must match exactly the cash bonus written in on the bid form submitted), a check made out to the Office of Mineral Resources for the sum equaling 10 percent of the total cash bonus bid, a check made out to the Office of Mineral Resources for a sum equaling $20 multiplied times the total number of acres being bid on (if bid is on entire tract, then multiply $20 times total tract acreage), a "hard" paper copy of the plat and legal description of a portion bid and a diskette or CD-ROM containing a .dxf file and a word.doc file describing the portion bid (which must match each other and the "hard" copies) and an electronic .pdf file of the plat. Failure to sign the bid form, or a discrepancy between the amount of the cash bonus set forth on the check presented and, if less than, the amount written in on the accompanying bid form, shall invalidate the bid, rendering it unacceptable to the State Mineral Board. Bids once submitted shall not be returned prior to the State Mineral Board meeting for which they were submitted, and then only by permission of the State Mineral Board or if the bid is rejected.

D. Bids shall be opened on the date, and at the time and place specified in the advertisement. If a nominated tract is withdrawn from a particular mineral lease sale by the State Mineral Board for any reason, any bids received on the withdrawn tract shall be returned unopened at the end of the State Mineral Board meeting from which the tract was withdrawn.

E. All bids opened shall be evaluated by the staff of the State Mineral Board and recommendations made as to whether each bid should, or should not, be accepted. The State Mineral Board may then award leases on those bids it deems acceptable—usually at the meeting when the corresponding bids are opened. All bids not accepted shall be returned to the unsuccessful bidder at the end of the meeting at which the bids were opened.

F. Awarded leases are prepared by the staff of the Office of Mineral Resources and sent to the new lessee for signature and recordation in the parish records of the parish(s) in which the lease acreage is located. A fully signed and executed copy of the lease, with recording information, shall then be returned to the Office of Mineral Resources within 20 days of receipt therefrom (failure to so return may result in forfeiture of lease) and shall be filed in the lease records of that office.

G. More particular information with regards to the bidding procedure may be obtained from the Leasing Manual located on the DNR website as set forth hereinabove.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:255 (February 2008).

§903. Assignments and Other Transfers of Interest

A. Any assignment or other transfer of an interest in a state mineral lease must be approved by the State Mineral Board and failure to so obtain approval shall render the assignment or transfer null and void (R.S. 30:128).

B. Before any assignment or other transfer of an interest in a state mineral lease is approved, any and all of the assignees must be currently registered prospective leaseholders with the Office of Mineral Resources.

C. Any assignment must clearly show that a working interest in a state mineral lease is being transferred (no net revenue interest, override royalty, well bore interest, or other similar non-working interest transfer will be approved by the State Mineral Board), contain a clear description of the working interest (including legal description of lease portion if applicable) being transferred, not show a greater interest being transferred than is owned by the assignor and be accompanied by a Form B (see the DNR website for file) which shows the decimal working interest of all parties before and after the transfer. The assignment or other transfer must be signed by all assignors requisite to the transfer of the interest being assigned, witnessed and duly notarized (by witness attestation if necessary) in a form legally acceptable in the venue in which the assignment or other transfer is completed.

D. Each assignment or other transfer (more than one lease interest may be assigned or transferred in one assignment document) shall be accompanied by a check for the non-refundable fee as set in the fee schedule of the Office of Mineral Resources (LAC 43, Part V, §301); presently set at $100.

E. The assignment or other transfer, once approved by the State Mineral Board, shall be filed in the lease records of the Office of Mineral Resources in the file record of the applicable lease(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:255 (February 2008).

§904. Laws and Instructions

A. The general statutory provisions applicable to mineral leases from the state of Louisiana on state owned lands and waterbottoms are located in R.S. 30:121-221. The general, applicable provisions of the Constitution of the State of Louisiana of 1974, as amended, are Article IX, §§1-5.

B. Instructions regarding obtaining and transferring interests in state mineral leases may be found in the leasing manual located on the Department of Natural Resources (DNR) website at http://dnr.louisiana.gov/min/petlan/leasing.asp.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:256 (February 2008).

§905. Mineral Board Policy

A. Mineral Board Policy regarding matters of mineral leasing and transfers of mineral lease interests may be obtained on request by telephoning the Office of Mineral Resources at (225) 342-4606.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:256 (February 2008).

Subchapter B. Application for Approval of Transfer of Solid Mineral Lease or Sublease

The rules contained herein shall govern every application for approval by the State Mineral Board of a proposed transfer of any lease or sublease entered into by or under the authority of or subject to the jurisdiction of the State Mineral Board which includes the development and production of solid minerals, under the circumstances described in Act 296 of 1979.

§913. Definitions

A. As used in these regulations, the following terms have the meanings assigned below, unless the context otherwise requires.

Applicant—the person seeking approval by the board of a proposed transfer (as described in Act 296 of 1979) of a lease.

Board—the State Mineral Board of the state of Louisiana.

Control—the term control (including the terms controlling, controlled by and under common control with) means possession (direct or indirect) of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Director—any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

Lease—any lease or sublease entered into by or under the authority of or subject to the jurisdiction of the board which includes the development and production of solid minerals.

Lessee—a person or entity which at the time of a proposed transfer (as described in Act 296 of 1979) has the right to develop and produce solid minerals under a lease.

Officer—the chairman, the president, each vice-president in charge of a principal business function, the secretary, the treasurer, and the comptroller, and any other person performing similar functions with respect to any organizations whether incorporated or unincorporated.

Person—a natural person, partnership, syndicate, corporation or any other group or entity.

Secretary—the Secretary of the Department of Natural Resources.

B. Other terms used in these regulations have the same meanings as are set forth in Act 296 of 1979 unless the context otherwise requires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:131 (March 1980).

§915. Procedure for Preparing and Filing Applications

A. Date of Filing. At least 20 days (Saturdays, Sundays, and holidays excluded) prior to the date on which the transfer is to be effected, or in the case of a transfer by means of purchase of 10 percent or more of equity securities of the lessee, 20 days prior to such purchase, an application shall be filed with the secretary and delivered by hand to the lessee.

B. Number of Copies and Accompanying Material

1. Two signed copies of the application (including exhibits and all other accompanying papers and documents) shall be filed with the secretary at the Department of Natural Resources, Baton Rouge, LA 70804. One signed copy of such application shall be delivered to the lessee.

2. Each application shall be accompanied by a signed consent of the applicant to the appointment of the secretary as his or its agent for service of any and all pleadings, discovery requests, orders and investigations relating to the application, and, if the applicant is a corporation, by a consent signed by each director and each officer of the applicant (and by each director and each officer of any corporation controlling the applicant) and by any other person identified under §917.A.4.a.ii hereof, agreeing to make himself available for prehearing investigatory or discovery proceedings either in the state of Louisiana or in the state in which the lessee maintains its or his principal executive offices.

3. Each application shall be accompanied by a certified or bank cashier's check in the amount of $100, payable to secretary, Department of Natural Resources, as an examination fee and, except as provided in §923, by a surety bond issued by a bonding company licensed to do business in the state of Louisiana in the principal amount of $5,000 (or such lesser amount as the secretary may permit upon request) conditioned to provide for payment of the costs of any investigation or hearing with respect to the application.

4. If the applicant is a corporation, the application shall also be accompanied by a certified copy of a resolution or resolutions of the board of directors of such applicant (and of any corporation controlling such applicant) specifically authorizing the person or persons signing the application and any consent on behalf of the applicant to sign and file the same.

C. Requirements as to Paper, Printing, and Language

1. The application shall be filed on good quality, unglazed, white paper, 8 1/2 by 14 inches in size, insofar as practicable.

2. The application and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, or typewritten. All copies of applications and associated material shall be easily readable and suitable for repeated photocopying.

3. The application shall be in the English language. Any associated material filed with the application in a foreign language shall be accompanied by a translation into the English language.

D. Presentation of Information

1. Except as otherwise provided:

a. the application requires information only as to the applicant;

b. whenever words relate to the future, they have reference solely to present intention; and

c. any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

2. Unless clearly indicated otherwise, information set forth in any part of the application need not be duplicated elsewhere in the application. Where it is deemed necessary or desirable to call attention to such information in more than one part of the application, appropriate cross-references are permitted.

3. Material contained in any exhibit to the application may be incorporated by reference in the application. Such material shall be clearly identified in the reference, and an express statement that the specified matter is incorporated by reference shall be made at the particular place in the application where the information is required. Material shall not be incorporated by reference in any case where such incorporation would render the application incomplete, unclear or confusing.

4. Information need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense or because it rests within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions.

a. The applicant shall give such information on the subject as he/she possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

b. The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

5. The application shall set forth such additional material facts, if any, as may be necessary to make the required information, in the light of the circumstances under which it is provided, not misleading. The secretary may at any time request an applicant to submit additional relevant information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:131 (March 1980).

§917. Content of Application

A. Each application shall contain the information required by Act 296 of 1979 and by this rule, §917.

1. Information as to the Lessee. Set forth the name of the lessee and the address of its principal executive offices and describe, insofar as practicable, the lease or leases of the lessee which it is proposed to transfer and the operations or other activities currently being conducted in relation to such lease or leases.

2. Information as to the Applicant. If the applicant is a corporation, partnership, limited partnership, syndicate or other group of persons, the application shall set forth its name, the state or other place of its organization, its principal business, the address of its principal executive offices and the information required by Subparagraphs A.2.e and f below. If the applicant is natural person, the application shall set forth the information specified in Subparagraphs A.2.a-g below with respect to such person(s). If the applicant is a corporation not subject to the reporting requirements of the federal securities laws, there shall be filed as exhibits audited financial statements for its three most recent fiscal years and interim financial statements for any subsequent period through the end of the last preceding calendar quarter for which such statements are available:

a. name;

b. residence or business address;

c. present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted;

d. material occupations, positions, offices or employments during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which occupation, position, office or employment was carried on;

e. whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, giving the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

f. whether or not the applicant has, during the last five years, been a party to, or materially adversely affected by, any judicial or administrative proceeding under any law or regulation regulating exploration, development, production or other operations involving any solid minerals or other extractive industry or activity, or under any law or regulation regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, and if so, describing fully any such proceeding, including the disposition thereof. Copies of all material pleadings and of all orders and judgments therein shall be filed as exhibits;

g. citizenship(s):

i. instruction. If the application is filed by a partnership, limited partnership, syndicate or other group, the information called for by §917.A.2 shall be given with respect to:

(a). each partner of such partnership;

(b). each partner who is denominated as a general partner or who functions as a general partner of such limited partnership;

(c). each member of such syndicate or group; and

(d). each person controlling such partner or member;

ii. if the statement is filed by a corporation, or if a person referred to in Subclause (a), (b), (c), or (d) of Clause A.2.g is a corporation, the information called for by the above mentioned items shall be given with respect to:

(a). each officer and director of such corporation;

(b). each person controlling such corporation; and

(c). each officer and director of any corporation ultimately in control of such corporation.

3. Manner of Transfer. The application shall set forth the manner in which the applicant proposes to effect the transfer of the lease or leases (including, without limitation, the manner in which the transfer is to be financed and the terms of any agreement or understanding with respect to the transfer) and the applicant shall file as exhibits all relevant contracts and agreements, together with any documents required to be filed under any other law or regulation in consequence of such proposed transfer. The application shall also set forth a description of the background of the proposed transfer.

4. Information about the Applicant's Relevant Experience

a. The applicant shall fully describe his or its experience and capabilities to assume responsibility for operations under the lease or leases, including (without limitation) the following information.

i. Applicant's experience in the solid minerals and other extractive industries during the five years next preceding the application.

ii. If the applicant is other than a natural person, the names, titles and addresses of the officers or other persons who would have primary responsibility for the conduct of operations under the lease or leases and, as to each such person, his educational background, his professional background, including his present job

responsibilities, and the information called for under Paragraph A.2 of this Section.

iii. The names and addresses of any expert in the field of expertise relevant to the lease or leases or operations thereunder who has been retained by the applicant at any time during the past five years and a statement of the nature of such retention. Copies of any report(s) rendered to the applicant by any such expert(s) shall be filed as exhibits.

b. Instruction. It is not sufficient compliance to recite the applicant's intention to rely upon the lessee's experience unless the applicant and lessee have entered into a formal written agreement for a term ending with or after the unexpired portion of the lease, under which the lessee will manage the property or properties subject to the lease. Any such agreement shall be filed as an exhibit to the application.

5. Plans of the Applicant with Respect to the Lease. The application shall describe any plans or proposals of the applicant which relate to exploration, development, production or other operations under the lease or leases, including, without limitation, any loan or proposal to do the following:

a. to increase, reduce or abandon such operations;

b. to retain any person to conduct such operations;

c. to transfer the lease or leases;

d. to seek modification of its or their terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:132 (March 1980).

§919. Exhibits

A. Additional Exhibits. The applicant may file such exhibits as he/she may desire in addition to those required under §917. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

B. Omission of Substantially Identical Documents. In any case where two or more contracts, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the applicant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The secretary may at any time, in his discretion, require the filing of copies of any documents so omitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980).

§921. Amendments

A. Formal Requirements for Amendments. One copy of each amendment to an application shall be filed with the secretary, and delivered by hand to the lessee, promptly upon the occurrence of the event necessitating such amendment.

B. Withdrawal of Application or Amendment. Any application or any amendment or exhibit thereto may be withdrawn upon written request to the secretary. The request shall be signed and shall state the grounds upon which made. The request shall be deemed granted five days after receipt by the secretary, unless he shall order conditions to the grant thereof, in which event withdrawal will be effective upon written notice to him of compliance therewith. If an application is withdrawn, the examination fee paid upon the filing of the application will not be returned. The papers comprising any withdrawn application or amendment or exhibit thereto shall not be removed from the files of the secretary but shall be retained therein.

C. Powers to Amend or Withdraw Application. All persons signing an application shall be deemed, in the absence of a statement to the contrary, to possess the following powers:

1. to amend the application; or

2. to request the withdrawal of an application, an amendment or an exhibit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980).

§923. Application for Determination without Investigation or Hearing

A. An application filed in compliance with these rules may be accompanied by a request that the secretary transmit a recommended decision on the application to the board without first conducting an investigation or holding a hearing. Any such request shall be signed by or on behalf of the applicant and be accompanied by affidavits from each of:

1. the applicant (or an officer of the applicant); and

2. the lessee (or an officer of the lessee) stating that in their opinion there are no substantial issues requiring an investigation or hearing. In the event such request is denied, the applicant shall promptly thereafter file the surety bond required by §915.B.3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980).

Subchapter C. Royalty Crude Oil

§925. Purpose

A. It is the purpose of these regulations, and in the best interest of the state, to establish a program to provide a mechanism for taking state royalty oil volumes in kind and for the disposition by sales or processing contracts, in a fair and equitable manner, of available supplies of such state royalty oil to eligible refiners within the state, with the intent

thereby to increase the supplies of gasoline, diesel or other fuel products available to Louisiana citizens.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:142.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:256 (February 2008).

§927. Definitions

Affiliates—any business concerns affiliated with each other where either directly or indirectly one concern controls or has the power to control the other or a third party controls or has the power to control both.

Contract—a contract for the disposition of state royalty oil.

Lessee—the owner or owners of the working interest under a state lease.

Lessor—the state of Louisiana acting through the State Mineral Board.

Louisiana Refiner—an applicant who is certified by the mineral board.

Refiner—a qualified applicant who contracts for state royalty oil pursuant to the policies and procedures established by the State Mineral Board and these regulations.

Royalty Oil—the state's royalty portion of crude oil or condensate produced from or allocated to state leases.

Seller—the State Mineral Board acting on behalf of the state of Louisiana in a contract to sell royalty oil.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:256 (February 2008).

§929. Policies and Procedures of the State Mineral Board

A. Royalty oil available through exercise of the state's right to take in kind shall be disposed of pursuant to policies and procedures approved by the State Mineral Board, which shall be consistent with the intent and purpose of R.S. 30:143 and these regulations.

B. Prior to the execution of any contracts by the State Mineral Board, and pending a determination of available supplies, the Office of Mineral Resources, under the direction of the Secretary of the Department of Natural Resources, shall prepare for board consideration recommendations for the disposition of available state royalty oil. Such recommendations shall address the sale and accounting of royalty oil; processing and accounting for royalty oil; and public bidding and accounting for royalty oil.

C. The Office of Mineral Resources shall prepare a projection of the costs of administering the program as well as a recommendation to the board of the amount of administrative fee, not to exceed $0.20 per barrel, necessary to cover such costs, and if applicable, the minimum volume of royalty oil which must be included in each type of transaction to be cost efficient.

D. In accomplishing the purposes of the Section, the Office of Mineral Resources shall be authorized to consult with such industry, government and professional persons as may be necessary. Within the limitations of its budget, or utilizing funds made available for that purpose, the office may contract for any professional services necessary, subject to the approval of the Secretary of the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:256 (February 2008).

§931. Inventory; Delivery Points; Objections

A. For each lease, division order or other legal instrument pursuant to the terms of which the state has a royalty oil interest susceptible of taking in kind, the Office of Mineral Resources shall determine the volumes and prices applicable to such royalty.

B. The Office of Mineral Resources shall notify each of the state's lessees of the state's interest in taking in kind the volume of state royalty oil attributable to the production of each such lessee, requesting the designation, within 30 days, of proposed delivery points therefore, and notice of any perceived impediments, objections or hardships with regard to such taking under a particular lease or other legal instrument.

C. Impediments or objections which cannot be resolved within 60 days of notice, by informal conference with the State Mineral Board, shall be referred to the Secretary of the Department of Natural Resources for his review and disposition by such procedures as he may deem appropriate and in the best interest of the state.

D. The lease volumes, prices and proposed delivery points for all state royalty oil for which there is no unresolved impediment or objection to taking in kind, shall be compiled by the Office of Mineral Resources for submission to the State Mineral Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:257 (February 2008).

§933. Louisiana Refiner Criteria

A. To be eligible to purchase or process state royalty crude oil an applicant therefore must be certified by the State Mineral Board as a Louisiana refiner.

B. To qualify as a Louisiana refiner, an applicant to purchase or process state royalty crude shall meet all of the following criteria.

1. Applicant shall be a Louisiana business entity having its principal place of business in the state of Louisiana. In applying this criterium, principal place of business shall mean:

a. 51 percent of the applicant's and all affiliates' total refining capacity is located in Louisiana; or

b. Louisiana is the applicant's state of incorporation; or

c. applicant's headquarters or corporate offices and at least 51 percent of its officers and employees are located in Louisiana.

2. Applicant shall have facilities in the state with available capacity for refining or processing crude oil or condensate into fuel products and/or the capability for the distillation of methanol or ethanol suitable for blending with gasoline to produce a motor fuel.

3. Applicant must have adequate facilities to receive crude oil and own or have contractual rights to use facilities for storage of royalty crude oil and for storage or products refined therefrom.

4. Applicant must be able to:

a. legally condition the sale of products refined from the state royalty oil upon the right of the state to exercise a right of first refusal to any such products; and

b. to give first priority to Louisiana customers in the usual course of sale of such products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:257 (February 2008).

§935. Application Requirements

A. A refiner desiring to purchase or process state royalty oil shall file an application with the Office of Mineral Resources with an original and 10 copies containing the following information:

1. the full name and address of the applicant;

2. a detailed statement showing the applicant's qualifications to be certified a Louisiana refiner pursuant to §933 of these regulations, attested to by affidavit;

3. the capacity of the refinery to be supplied;

4. a tabulation for each of the last 12 months of operation, or since start-up date if less than 12 months, or projection for the next 12 months, of refining capability, of the amount of the thru-put capacity, the source and grades of crude oil refined or refinable, and the kind, amount and percentage of the principle fuel products produced;

5. if applicable, the amount and source of methanol and ethanol production available to applicant including identification of the sources of agricultural products used to produce such methanol and ethanol;

6. a plan of procedure setting forth in detail the mechanisms proposed to be employed to dispose of refined products in the state and to accommodate the state in the event that it exercises its rights of first refusal, together with any approvals from the federal government which may be necessary to carry out such disposition;

7. a complete disclosure of applicant's affiliation, and the nature thereof, with any other producer and refiner;

8. the minimum amount of royalty oil requested and the state lease or leases applicant believes offer a potential source of royalty oil, if known;

9. a list of all customers to whom products were sold in the current and previous year and all customers required to be supplied pursuant to federal law or regulations, including such customer's address and type of products purchased;

10. a contingency plan for handling of the state's royalty crude in the event that a force majeure event occurs disrupting normal operations;

11. such other information as the State Mineral Board may by appropriate notice require for such applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:257 (February 2008).

§937. Disposition; Approval; Priority

A. Royalty crude shall normally be made available to qualified applicants based upon each qualified applicant receiving an equal proportionate share of the total royalty crude oil available. The State Mineral Board may establish policies and procedures for alternate methods of disposition of royalty crude not otherwise subject to public bid, and for public bidding for royalty crude not subject to price controls when the board deems such alternate methods are appropriate. In either case the board may establish such conditions as it deems necessary, in addition to the conditions set forth in these regulations, to protect the interests of the state and to provide, to the extent practicable, for fair and equitable allocation.

B. Prior to implementing procedures for public bidding, and prior to disposing of royalty crude by a contract, for the sale or processing thereof, the board shall present such procedures, and each such contract, to the House and Senate Committees on Natural Resources, meeting jointly, for approval thereof.

C. The board shall incorporate in its policies and procedures mechanisms which give first priority to eligible refiners with capability to refine typical south Louisiana, light sweet type crude and refiners with operable facilities for the distillation of methanol or ethanol suitable for blending with gasoline to produce a motor fuel. The board shall develop procedures for ranking refiners with facilities for the distillation of methanol or ethanol according to the percentage of Louisiana agricultural products used in such

refiners' distillation process, with those refiners deriving ethanol or methanol by using 50 percent or more of Louisiana agricultural products ranked first. Refiners using less than 10 percent Louisiana agricultural products shall not be entitled to ranking in this first priority.

D. No refiner shall be entitled to receive more than 7,500 barrels per day of state royalty crude.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:258 (February 2008).

§939. Contract Term; Renewal; Minimum Requirements

A. The term of any contract entered into by the board with a qualified refiner for the purchase or processing of state royalty crude oil shall have a maximum primary term of no more than three years. Such contract shall be renewable upon timely application of the same conditions, or such additional conditions as may be deemed necessary to serve the best interest of the state, at the sole discretion of the board.

B. Intention of the refiner to seek renewal of a contract shall be evidenced by written application filed no later than 60 days prior to the expiration date of the contract then in effect.

C. If the board does not receive written application for renewal within the time set forth in Subsection B, the board may readvertise the availability of the volume of royalty crude oil committed under such contract and enter into a new contract with a qualified refiner effective upon the expiration date of the unrenewed contract, or make such other disposition of the royalty oil as it determines to be in the best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:258 (February 2008).

§941. Transportation; Delivery; Storage; Transportation Costs; Minimum Requirements

A. In any contract, the refiner shall be responsible to arrange with the state's lessee for the delivery and receipt of all royalty oil.

B. The point of delivery for royalty oil under any contract shall be the field where produced or a site as near as possible to the point of delivery normally utilized by the state's lessee for delivery of crude oil when state's royalty share is not taken in kind.

C. The refiner shall promptly reimburse state's lessee for the cost of transporting crude oil to the point of delivery at the rate set by the applicable state lease for deductions from royalties for the costs of transportation. If no such rate for deductions is set by the applicable state lease, the refiner shall reimburse the lessee at a rate to be approved by the State Mineral Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:258 (February 2008).

§943. Price; Deductions; Method of Payment; Reports; Taxes; Administrative Fee

A. The price to be paid by a refiner pursuant to any contract for the purchase of royalty crude oil shall be the maximum price allowed pursuant to the applicable and controlling federal or state law on the effective date of the contract. In the event that such price controls are terminated during the term of a contract, the price to be paid by a refiner shall be the fair market value of the state's royalty oil, which condition shall be effective at any time while the contract is in effect.

B. In calculating the payments for royalty crude oil purchased, the refiner may deduct from the price that portion of the transportation costs reimbursed to the state's lessee which represents the actual cost of transportation to the agreed upon point of delivery utilized. Any additional cost of transportation for delivery to a more distant point shall be borne solely by the refiner.

C. Payments due under any contract shall be made monthly, such payments to be consistent with the volume of royalty oil received by the refiner during such preceding month.

D. The refiner shall be required to file monthly reports with the Office of Mineral Resources setting forth by lease and delivery point all volumes of crude oil received.

E. The state shall assume responsibility for all severance taxes due on its royalty production in effect on the contract date. The refiner shall be liable for all other taxes and any additional or increased taxes which become effective following the date of the contract. The board may require the refiner to advance or remit to the appropriate state lessee all severance taxes paid by such lessee which are attributable to the volume of royalty oil acquired by the refiner. In such event the refiner shall be entitled to deduct such taxes on a monthly basis from payments due the state and remit same to the appropriate state lessee.

F. In addition to all other prices, fees, and charges otherwise authorized in these regulations, the board may assess a fee not in excess of $0.20 per barrel of royalty oil delivered to cover the cost of administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:258 (February 2008).

§945. Utilization; Right of First Refusal; Assignment; Resale

A. Refiner shall not resell any royalty crude oil without the prior written consent of the mineral board.

B. All royalty crude oil sold or processed under any contract, or other crude oil received in lieu of royalty crude oil under an exchange agreement, shall be utilized at refiner's facilities in the state and shall not be used for resale in kind except as authorized by the provisions of this Section. To the extent permitted by controlling federal law or regulations no gasoline or diesel end product refined from state royalty crude under any contract shall be sold for the ultimate purpose of retail sale outside of the state of Louisiana.

C. The resale or exchange of royalty crude oil in violation of the provisions of this Section shall be punishable by a fine of not less than $10,000 per day for each day of violation.

D. Any contract for the sale or processing of state royalty oil shall be conditioned upon the right of the state to exercise a right of first refusal to any product refined from the royalty crude.

E. Any contract for the sale or processing of state royalty oil shall also require that first priority be given to Louisiana customers in the usual course of sale of end products.

F. Refiner shall be required to furnish the board copies of all contracts entered into between refiner and third parties reflecting delivery, receipt, handling, transporting, sale and use of crude oil covered by a contract with the board, or refined products derived therefrom.

G. No contract shall be assignable without the prior written consent of the board.

H. Refiner shall not enter into any exchange agreement whereby other crude oil in lieu of the state's royalty crude oil is delivered to refiner without the prior written consent of the mineral board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:259 (February 2008).

§947. Penalties; Liability; Bond

A. The board shall provide for the assessment of a late charge at the rate of 7 percent per annum on any payments received from the refiner after the date such payments are due as otherwise provided in these regulations.

B. In any contract for the disposition of royalty crude oil, the board shall assure that the state is held free and harmless from any liability, cost or expense arising from the execution of such contract or from the delivery of any crude oil pursuant thereto. The refiner shall assume all liability for the actions of itself, its agents and employees, and of the state's lessee, its agent and employees in receiving delivery, handling, transporting and refining of royalty oil.

C. Prior to the disposition of any royalty crude oil as provided herein, the board shall require each refiner to furnish to the state a letter of credit from an established and recognized bank within the state, or an acceptable surety bond, in an amount equal to the price and administrative fee for 45 days volume of crude oil to be delivered under any contract, or $500,000, whichever amount is less, guaranteeing good and faithful performance of the terms and conditions of these regulations and any contract. The full amount of such letter of credit or bond, or any portion thereof, may be applied to any sums or damages due the state as a result of the breach of any condition of the contract or violation of these regulations. Such right shall be in addition to any other legal rights and remedies available to the state. The board shall reserve the right to require the increase in the amount of this security when necessary to protect the interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:259 (February 2008).

§949. Warranties; Governmental Regulations

A. In any contract the board shall not warrant the crude oil delivered as being merchantable or suitable for refiner's purpose and the board shall not be liable for the quality of the crude oil or the content thereof. The board shall not warrant to refiner that there are available sufficient quantities of royalty crude oil from any state lease(s) dedicated to a contract to meet refiner's requirements.

B. All contracts shall be subject to applicable state, local and federal laws, rules and regulations. Refiner shall be required to secure all licenses, permits, orders, or waivers necessary for the performance of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:136 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:259 (February 2008).

§951. Additional Procedural Rules

A. The board may from time to time adopt such additional policies and rules of procedures as are deemed necessary to fully effectuate and administer the regulations set forth herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:136 (March 1980), amended by the Department of Natural Resources, Office of Mineral Resources, LR 34:259 (February 2008).

Chapter 10. Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy

§1001. Authority

A. These rules and regulations are promulgated by the Secretary of the Department of Natural Resources pursuant to the Administrative Procedure Act as authorized by R.S. 41:1734.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.
HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:260 (February 2008).

§1003. Purpose

A. These rules and regulations are promulgated for the following purposes:

1. to implement the provisions of and accomplish the intent of the legislature as set forth in Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950;

2. to establish procedures for state wind lease acquisition, transfer, release, operations, electric power production royalty payment and reporting, and decommissioning;

3. to institute reasonable fees for services performed by the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.
HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:260 (February 2008).

§1005. Overview of the State Wind Lease Acquisition Process

A. Leases for the exploration, development and production of wind energy on state lands and water bottoms under Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950 shall be acquired from the State Mineral Board in conjunction with the Secretary of the Department of Natural Resources, through the Office of Mineral Resources, through a public bid process as set forth in this Chapter. There are nine general steps in the state wind lease acquisition process as outlined below. Each general step has its own set of procedures which are outlined in detail in separate Sections of this Chapter:

1. registration;

2. pre-nomination research;

3. nomination of state lands and water bottoms for wind lease;

4. examination and evaluation of nomination for state wind lease;

5. advertisement of state tract offered for wind lease and request for bids;

6. submission of bids on state tract offered for wind lease;

7. examination and evaluation of bids for state wind lease;

8. award of state wind lease;

9. issuance and execution of state wind lease contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.
HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:260 (February 2008).

§1007. Registration

A. Applicant Registration. Any party who wants to apply for a state wind lease shall register certain information with the Office of Mineral Resources on a one-time basis prior to submitting an application. Registration consists of completing and submitting an official Applicant Registration Form.

1. Prospective Leaseholder Registration. All prospective leaseholders of state wind leases shall register certain information and proof of current authorization to do business in the state of Louisiana with the Office of Mineral Resources and thereafter renew their registration annually by January 31. Only those bidders who are registered as prospective leaseholders with the Office of Mineral Resources shall be allowed to bid on tracts for the purpose of obtaining a state wind lease. Transfers or assignments of state wind leases shall not be granted to prospective leaseholders that are not currently registered as a prospective leaseholder with the Office of Mineral Resources.

a. Registration consists of submitting a completed official prospective leaseholder registration form (obtainable from the Office of Mineral Resources) and an appropriate certificate from the Louisiana Secretary of State to the Office of Mineral Resources as follows:

i. individual/sole proprietorship—no certificate required;

ii. corporation—good standing certificate;

iii. limited liability company—good standing certificate; and

iv. partnership—existence certificate.

b. If a current record state wind lessee fails to maintain his Prospective Leaseholder Registration with the Office of Mineral Resources, the State Mineral Board may levy liquidated damages of $100 per day until the unregistered lessee is properly registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.
HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:260 (February 2008).

§1009. Pre-Nomination Research

A. A party seeking to nominate state lands or water bottoms for wind lease shall conduct research prior to nomination to determine and confirm whether the state lands or water bottoms fall under one of the following six categories and comply with any category requirements.

1. Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries Property. The lands and water bottoms in this category are under the jurisdiction of the Wildlife and Fisheries Commission or the Department of Wildlife and Fisheries, including but not limited to, wildlife management areas and refuges. Questions concerning these lands and water bottoms should be directed to the Louisiana Department of Wildlife and Fisheries, Office of Wildlife, Fur and Refuge Division.

2. School Indemnity Lands

3. Tax Adjudicated Lands

4. Vacant State Lands

5. White Lake

6. Legal Areas. Title to certain state lands or water bottoms may have been established by compromise without litigation, compromise during the course of litigation, or adjudication in a court of law. For state wind leasing purposes, state lands or water bottoms subject to such compromise or adjudication are viewed as a "Legal Area." Determine whether the state lands or water bottoms to be nominated include a legal area. If they do, the nominating party shall provide a copy of the compromise instrument(s) or judgment(s) that establish(es) the state ownership interest.

Questions concerning categories 2 through 6 should be directed to the State Land Office, Division of Administration.

B. A party seeking to nominate state lands or water bottoms for wind lease shall conduct research prior to nomination to determine and confirm that the state lands or water bottoms are available for wind lease. The following are some conditions indicating availability.

1. The State Mineral Board has not taken the state lands and water bottoms out of commerce for the purpose of wind leasing.

2. The state lands and water bottoms are subject to an active or non-released land use agreement granted by the state of Louisiana and the user under such an agreement has been notified of the proposed wind leasing.

a. The nominating party shall provide proof of notification consisting of a complete list of the users of the state lands and water bottoms to be nominated for wind lease, the official name and/or number of the governing land use agreement, the official name of the state entity that granted the governing land use agreement, along with an affidavit sworn to by the nominating party, in the presence of a notary and two witnesses, confirming that the party has notified each of the listed users of the state lands and water bottoms of the proposed wind leasing. The nominating party shall follow the notarization requirements of R.S. 35:12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:260 (February 2008).

§1011. Nomination of State Lands and Water Bottoms for Wind Lease

A. Interested, registered parties shall nominate state lands and water bottoms for wind lease by scheduling a pre-nomination meeting with and submitting proposals (called "nominations") by application to the Office of Mineral Resources in the form it requires. Each application shall include a description of the land, including a map, on both paper and diskette or CD-ROM, and be accompanied by submission of a nonrefundable $400 processing fee made payable to the Office of Mineral Resources, as well as any other documentation and information required.

B. Only those parties who are registered applicants with the Office of Mineral Resources as set forth under §1007.A shall be allowed to nominate state lands and water bottoms for wind lease.

C. A party interested in nominating state lands and water bottoms for wind lease shall observe the following restrictions.

1. Use bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), to accurately and clearly describe the nominated acreage. Determine whether the acreage to be nominated falls in the North Zone or the South Zone of the Louisiana Coordinate System of 1927 and provide this information in the nomination packet. A single nomination may contain acreage that falls partially in the North Zone and partially in the South Zone. However, allocate the nominated acreage to the zone wherein the majority of the acreage falls and use that zone's coordinates (see R.S. 50:1).

a. A nominating party is excepted from using the Louisiana Coordinate System of 1927 only if the acreage to be nominated is not susceptible of or has another type legal description not translatable into a description using bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927. If the acreage to be nominated falls under this exception, the nominating party is allowed to provide the legal description of the property as provided in the title deed wherein the state acquired its ownership interest in the property.

2. Nominate 5,000 acres or less of state lands and water bottoms for state wind lease in a single nomination.

3. Delineate the nominated acreage by a square or rectangle only, no side of which shall be greater than 3 1/2 half miles 18,480.00 feet in length.

a. A nominating party is excepted from delineating the nominated acreage by a square or rectangle when the nominated acreage abuts the Three Mile Line as decreed by the United States Supreme Court in United States v. State of Louisiana et al. In this situation, use a polygon as close in shape to a square or rectangle as is practical.

D. A party interested in nominating state lands and water bottoms for wind lease shall schedule a pre-nomination meeting with the Office of Mineral Resources, at which meeting the party shall submit a nomination packet that includes one copy (unless required otherwise) of the following items:

1. an official letter of application for a state wind lease available from the Office of Mineral Resources. Provide three originally signed paper copies and no electronic copy;

2. any title documentation obtained pursuant to §1009.A.6;

3. any proof of notification documentation obtained pursuant to §1009.B.2;

4. a written property description of the nominated acreage, fully justified, using Microsoft Word. Provide three original paper copies and one electronic copy as a Word .doc file on the nomination diskette or CD-ROM. Include:

a. a designated point of beginning using X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), then going clockwise fully write out (no abbreviations or symbols) bearing and distance to the next X-Y coordinates for each corner back to the point of beginning;

b. the gross acreage amount of state lands and water bottoms, inclusive of Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries Property, contained within the nomination area;

c. the net acreage amount of state lands and water bottoms, exclusive of Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries property, contained within the nomination area; and

d. the net acreage amount of Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries property contained within the nomination area;

5. a plat of the nominated acreage, using the most recent background imagery. Use X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable). Provide three original paper copies and one electronic copy as a .pdf file on the nomination diskette or CD-ROM. Include:

a. an outline of the nominated acreage with a designated point of beginning and corners using X-Y coordinates that exactly match the X-Y coordinates for the point of beginning and corners provided in the written property description, clearly labeled therein;

b. an outline of the state lands and water bottoms falling in the nomination area, clearly labeled along with the acreage amount contained therein;

c. an outline of any Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries property, school indemnity lands, tax adjudicated lands, vacant state lands, White Lake, and legal areas, falling in the nomination area, clearly labeled along with the acreage amount contained in each;

d. an outline of each active or non-released land use agreement granted by the state of Louisiana including, but not limited to, a state wind lease, state mineral lease, state operating agreement, state exclusive geophysical agreement, state non-exclusive seismic permit, state right of way, and/or state surface/subsurface agreement, as well as any nomination tract approved for advertisement or advertised as offered for state mineral lease, state operating agreement, or state exclusive geophysical agreement abutting, adjacent to, intersecting, and partially/wholly enclosed in the nomination area, clearly labeled with its official number along with the acreage amount contained therein;

e. an outline of any lands and water bottoms not belonging to the state of Louisiana falling in the nomination area, clearly labeled "Not State Owned" along with the acreage amount contained therein;

f. all water bodies, clearly labeled;

g. the block system (if applicable), with block names and numbers;

h. section, township, range information (if applicable);

i. parish name(s); and

j. the name and date of the background imagery used;

6. a .dxf file that contains only the boundary of the nominated acreage, provided on the nomination diskette or CD-ROM. The boundary shall be a single line with no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat;

7. a nomination diskette or CD-ROM clearly labeled "State Wind Lease Nomination Diskette" that shall have the applicant and project names affixed thereon and contain the written property description as a Word .doc file, the plat as a .pdf file, and the .dxf file;

8. a summary of the environmental issues including, but not limited to, avian and baseline noise levels, the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development and production of wind energy, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation;

9. a list of governmental entities including each federal, state, parish and local governmental entity that has jurisdiction in the nomination area and for each, the contact person name, title, office address, telephone and fax numbers, and email, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;

10. a nomination fee payment in the amount of $400 made payable to the Office of Mineral Resources as a non-refundable fee to satisfy the cost of processing an application

for a state wind lease. A personal or business check is acceptable;

11. any other information and documentation required by the Office of Mineral Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:261 (February 2008).

§1013. Examination and Evaluation of Nomination for Wind Lease

A. If the Office of Mineral Resources determines that the state wind lease nomination complies with legal, procedural and technical requirements, as well as with any current policies and practices, it shall:

1. place the state wind lease nomination tract on the State Mineral Board's Tract Evaluation Committee agenda for the next regular board meeting;

2. take the area out of commerce for the purpose of wind leasing while the nomination is being evaluated;

3. transmit a copy of the letter of application for a State Wind Lease, written property description, and plat to the State Land Office and to the Louisiana Department of Wildlife and Fisheries, who shall review the proposed location of the state wind lease, certify to the State Mineral Board whether or not there are other leases of any kind at the proposed lease location and if so, provide copies to the State Mineral Board of the other leases as an attachment to the other leases certification; and

4. transmit the nomination packet and the other leases certifications to the Secretary of the Department of Natural Resources for evaluation.

B. The Secretary of the Department of Natural Resources shall evaluate the wind lease nomination pursuant to R.S. 41:1733.B and determine whether the proposed wind lease is appropriate. If so, he shall recommend to the State Mineral Board that it conduct a public bid process and if not, he shall recommend to the State Mineral Board that it not conduct a public bid process. The State Mineral Board, through the Office of Mineral Resources, shall notify the applicant of the secretary's determination via a bid process determination letter.

C. If an applicant wants to withdraw a nomination during the examination and evaluation process, prior to the tract being officially advertised for a state wind lease, he shall submit a letter requesting withdrawal of the nomination to Office of Mineral Resources, Attention: Leasing Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:262 (February 2008).

§1015. Advertisement of State Tract Offered for Wind Lease and Request for Bids

A. The State Mineral Board, through the Office of Mineral Resources, shall publish an advertisement of the state tract offered for wind lease and request for bids in the official journal of the state and official journal(s) of the parish(es) where the lands are located, and otherwise at its discretion, not more than 120 days and not less than 60 days prior to the date for the public opening of bids (generally the lease sale date). The advertisement shall contain a description of the land proposed to be leased and its official tract number, any notes pertaining to the nominated tract, the date, time and place where sealed bids shall be received and publicly opened, a statement that a bid shall only be for the whole of the land advertised and no portion bids will be accepted, the minimum dollar amount (bonus) and minimum electric power production royalty to be demanded, and any other information the board may consider necessary. This advertisement and any other published by the board shall constitute judicial advertisement and legal notice within the contemplation of R.S. Title 43, Chapter 5.

B. The advertisement shall also provide notice of the following.

1. A party shall bid on the whole of the land advertised. A portion bid shall not be accepted.

2. A wind lease on state lands and water bottoms shall have a primary term of five years.

3. The dollar amount (bonus) with regard to any wind lease on state lands and water bottoms shall be no less than the minimum amount set by the State Mineral Board. The dollar amount shall be provided on the official bid form as a total amount and as an amount per acre (which is equal to the dollar amount divided by the acreage bid on). The dollar amount (bonus) bid shall be due within 24 hours of state wind lease award. Payment shall be made to the Office of Mineral Resources via certified funds or wire transfer. If payment is not made the State Mineral Board may not execute the lease and may rescind it.

4. The annual rental with regard to any wind lease on state lands and water bottoms shall not be for less than one-half of the dollar amount (bonus).

5. The electric power production royalty with regard to any wind lease on state lands and water bottoms shall be no less than the minimum amount set by the State Mineral Board of the lessee's gross revenues. The state may elect, at its option, to take in kind all or any of the portion due it as royalty.

6. A bidder for a state wind lease may offer additional consideration.

7. When two or more parties submit a joint bid, the parties shall designate the undivided percent interest of each party on the official bid form. The interests so designated shall be stipulated in any lease that may be awarded. Failure to designate the undivided percent interest of each joint

bidder shall result in the State Mineral Board assigning equal interests to each bidder.

8. When two or more parties submit a joint bid, the parties shall designate the party who shall be the principal state wind lessee, authorized to act on behalf of all co-lessees, on the official bid form. Additionally, each party shall submit a designation of principal state wind lessee and operator form with the joint bid. The principal state wind lessee and operator so designated shall be stipulated in any lease that may be awarded.

9. A state wind lease shall not be for more than 5,000 acres.

10. The State Mineral Board is authorized to collect an administrative fee for leasing state lands and water bottoms for the exploration, development and production of wind energy in the amount of 10 percent of the total dollar amount (bonus) bid for a state wind lease. This 10 percent administrative fee shall be in addition to the total dollar amount bid and is due within 24 hours of state wind lease award. Payment shall be made to the Office of Mineral Resources via certified funds or wire transfer. If payment is not made the State Mineral Board may not execute the lease and may rescind it.

11. A bid for a state wind lease shall exclude all rights not specifically granted in any wind lease awarded.

12. Once a bid is submitted, it may not thereafter be withdrawn or cancelled. The State Mineral Board does not obligate itself to accept any bid. Bid acceptance or rejection is at the sole discretion of the State Mineral Board which reserves the right to reject any and all bids or to grant a wind lease on any portion of the state tract advertised and to withdraw the remainder of the tract.

13. If examination of the successful bid acreage amount reveals that there is more or less state acreage than the amount bid on, then the dollar amount (bonus) and annual rental shall be adjusted accordingly.

14. The successful bidder(s) to whom a state wind lease is awarded has 20 days from receipt of the lease contract, properly executed by the State Mineral Board, to execute and return the lease contract to the Office of Mineral Resources. Failure to return the lease contract, properly executed, within 20 days may result in forfeiture of the state wind lease including the dollar amount (bonus) and 10 percent administrative fee.

15. All state wind leases shall be executed upon the terms and conditions provided in the current official state wind lease form with any attached rider(s).

16. Notwithstanding any provisions to the contrary in any state wind lease awarded or in any rider attached thereto, the lease awarded shall be granted and accepted without any warranty of title and without any recourse against the lessor whatsoever, either expressed or implied. Further, lessor shall not be required to return any payments received under the state wind lease awarded or be otherwise responsible to the state wind lessee therefor.

17. Some tracts available for wind leasing may be situated in the Louisiana Coastal Zone as defined in R.S. 49:214.21 et seq., and may be subject to guidelines and regulations promulgated by the Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Coastal Management Division, for operations in the Louisiana Coastal Zone.

18. Lessor excepts and reserves the full use of the leased premises and all rights with respect to its surface and subsurface for any and all purposes except for those granted to the state wind lessee, including the use of the leased premises for the exploration, production and development of oil, gas and other minerals by the lessor, its mineral lessees, grantees or permittees. Co-users of the leased premises shall agree to coordinate plans and cooperate on activities to minimize interference with other operations to the extent possible.

19. Any and all wind data collected by the state wind lessee during the primary term of the lease shall become public record at the end of the primary term.

20. Any contract entered into for the lease of state lands for any purpose shall require that access by the public to public waterways through the state lands covered by the lease shall be maintained and preserved for the public by the lessee. This provision shall not prohibit the secretary of the agency having control over the property from restricting access to public waterways if he determines that a danger to the public welfare exists. This provision shall not apply in cases involving title disputes.

21. Prior to commencing construction, each state wind lessee and state wind lease operator shall have a general liability insurance policy in a form acceptable to the State Mineral Board as set forth in §1029.A.2.

22. Prior to commencing construction, each state wind lessee and state wind lease operator shall provide financial security in a form acceptable to the State Mineral Board as set forth in §1029.A.3.

23. The state wind lessee and state wind lease operator shall be required, in the state wind lease contract, to take measures to reduce risk to the state, including but not limited to, effecting compliance with any and all wind energy standards established by the American National Standards Institute (ANSI), the American Wind Energy Association (AWEA), the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards. Standards for wind energy development/operations include, but are not limited to:

a. wind turbine safety and design;

b. power performance;

c. noise/acoustic measurement;

d. mechanical load measurements;

e. blade structural testing;

f. power quality; and

g. siting.

C. A party may request proof that a tract was advertised in the official state and parish journals using the official Request for Proof of Publication form published by the Office of Mineral Resources. Proof of publication consists of certified copies of the affidavits from the official state and parish journals attesting to publication. There is a fee of $20 for providing proof of publication for a tract.

D. If an applicant wants to withdraw a nomination after the tract has been advertised for state wind lease, he shall submit a letter requesting withdrawal of the nomination to the State Mineral Board. No withdrawal shall be allowed unless approved by the State Mineral Board. If the State Mineral Board approves the request, the nomination fee payment shall not be refunded.

E. If a party wants to protest the State Mineral Board wind leasing a state tract, he shall submit a formal letter of protest to the State Mineral Board at least seven days prior to the meeting of the State Mineral Board to receive bids on the tract (generally the lease sale date). The letter of protest shall reference the appropriate tract number, parish, and state mineral lease sale date, as well as set forth the source and nature of the title claimed, how and when acquired, and by what legal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:263 (February 2008).

§1017. Submission of Bids on State Tract Offered for Wind Lease

A. Interested, registered parties shall submit sealed bids on the entirety of a state tract advertised as offered for state wind lease to the Office of Mineral Resources in the form it requires by the bid submission deadline (generally no later than 12 noon CT on the Tuesday immediately prior to the Wednesday lease sale at which the tracts are offered unless otherwise noticed). Each bid shall be accompanied by any other documentation and information required.

B. Only those bidders who are registered prospective leaseholders with the Office of Mineral Resources as set forth under §1007.B shall be allowed to bid on tracts for the purpose of obtaining a wind lease from the state of Louisiana.

C. A party interested in bidding on a state tract for wind lease shall prepare a bid packet that includes the items listed below. The bidder shall place all of the items required to be included in the bid packet in an envelope, completely seal the envelope, write the official tract number on the outside of the envelope, and notate on the outside of the envelope that "Sealed Bid for State Wind Lease is Enclosed." If a bidding party is submitting multiple bids then he may place the individual sealed bid packet envelopes into a larger envelope, completely seal the envelope, and notate on the outside of the envelope that "Sealed Bids for State Wind Lease are Enclosed."

1. An official bid form available from the Office of Mineral Resources. Provide one originally signed paper copies and no electronic copy.

2. A summary of experience that shall include, at a minimum, the number of years experience in the exploration, development and production of wind energy and project descriptions. Experience with wind energy projects involving government lands and water bottoms shall be so specified.

3. A proposed plan of operations that shall set forth the following:

a. a summary of the overall business plan of the proposed wind energy development including size of operation, development costs, marketing of the site, market prices, and status of acquiring a power purchase agreement;

b. a summary of the overall wind project including status of site control (progress with leasing other properties within the entire wind project boundaries), wind data reviews, and application process with the transmission provider, as well as a time frame for the project to be operational;

c. summary of the wind development (include plat) proposed on the state lands and water bottoms sought to be leased including layout of wind power and transmission facilities, proposed wind tower information (size, location, number), which towers will be affixed to existing platforms, which towers will necessitate newly constructed platforms, turbine make, type, nameplate power production capacity, and selection criteria used, and supporting infrastructure;

d. the status and timeline of the major milestones in the wind project exploration, development, production, and decommissioning;

e. the name of the company that will operate the wind project and the linkage, if any, to the applicant;

f. a summary of the expected revenue and cash flow for the wind project on state lands and water bottoms, including a detailed list of assumptions;

g. the measures proposed to reduce risk to the state, including but not limited to, a summary of compliance with any and all wind energy standards established by the American National Standards Institute (ANSI), the American Wind Energy Association (AWEA), the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards. Standards for wind energy development/operations include, but are not limited to, wind turbine safety and design, power performance, noise/acoustic measurement, mechanical load measurements, blade structural testing, power quality, and siting;

h. a summary of how the wind energy project will ensure the viability of the state's natural resources, provide a continuing energy source for the citizens and businesses of Louisiana, promote economic development through job

retention and creation in the state of Louisiana, and promote a clean and lasting environment;

i. a summary of how the use of the state land and water bottoms for the exploration, development and production of wind energy will be coordinated with other users of the state lands and water bottoms.

4. A summary of the environmental issues including, but not limited to, avian and baseline noise levels, the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development and production of wind energy, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation.

5. A list of project participants who are or will be participating in the planning, predevelopment, construction, operation, maintenance, remediation, and/or decommission phases of the proposed project, and a brief description of their role. This list shall be supplemented for each new project participant.

6. A summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of such financing.

7. A list of governmental entities including each federal, state, parish and local governmental entity that has jurisdiction in the nomination area and for each, the contact person name, title, office address, telephone and fax numbers, and email, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity.

8. If two or more parties are submitting a joint bid, each party shall submit a Designation of Principal State Wind Lessee and Operator Form with the joint bid.

D. The sealed bid packet may be hand-delivered or mailed to the Office of Mineral Resources. However, whether hand-delivered or mailed, the sealed bid packet shall be physically in the hands of appropriate Office of Mineral Resources personnel by the bid submission deadline (generally no later than 12 p.m. CT on the Tuesday immediately prior to the Wednesday lease sale at which the tracts are offered unless otherwise noticed). A receipt is generated in the name of and provided to the party delivering the bid. Any bid received after the deadline shall not be accepted. Further, no bid, once submitted, shall be thereafter withdrawn or canceled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:264 (February 2008).

§1019. Examination and Evaluation of Bids for State Wind Lease

A. Sealed bids for state wind lease shall be publicly opened and read aloud on the date advertised for the public opening of bids (generally the lease sale date at which the tract is offered) in the LaBelle Room, also known as the Conservation and Mineral Resources Hearing Room, located on the First Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA. The State Mineral Board shall defer action on the bids for state wind lease until at least the next regular board meeting, but no later than 100 days, pending examination and evaluation of the bids by its staff. The State Mineral Board staff shall examine and evaluate the bids to confirm compliance with legal, procedural and technical requirements, as well as with any current policies and practices, based on available data and analyses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:265 (February 2008).

§1021. Award of State Wind Lease

A. At the next regular board meeting following conclusion of the staff's examination and evaluation of the bids for state wind lease, after the staff has technically briefed the board in executive session as to the merit of the bids, the State Mineral Board shall reconvene in open session at the lease sale (generally held the same day as the regular board meeting). The Office of Mineral Resources' designee shall publicly announce the staff's recommendations to the board as to which bids should be accepted and which bids should be rejected, providing the reasons for rejection. The State Mineral Board shall announce its state wind lease award decision at the lease sale.

B. Information as to bids on and awards of state wind leases shall be published in SONRIS, the Department of Natural Resources' Strategic Online Natural Resources Information System.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:265 (February 2008).

§1023. Issuance and Execution of State Wind Lease Contract

A. The Office of Mineral Resources collects the entire dollar amount (bonus) and 10 percent administrative fee within 24 hours of state wind lease award, assigns a state wind lease number to each bid accepted by the State Mineral Board, prepares the state wind lease contract as awarded, and circulates the final contract of lease for execution, proper recordation in the appropriate parish public records, and timely return within 20 days for filing in the official state wind lease files.

B. Payment of the entire dollar amount (bonus) and 10 percent administrative fee shall be due within 24 hours of state wind lease award. Payment of both sums may be made in one payment and shall be made to the Office of Mineral Resources via certified funds or wire transfer and all proceeds shall be negotiated and transmitted for processing in accordance with law. The lease contract shall not be mailed out to the wind lessee until the entire dollar amount

(bonus) and 10 percent administrative fee are received by the Office of Mineral Resources.

C. After the Office of Mineral Resources receives the entire dollar amount (bonus) and 10 percent administrative fee, personnel shall mail at least three original state wind lease contracts, properly executed by the State Mineral Board, to the state wind lessee per the bidder name and contact information provided in the official bid form via certified USPS mail return receipt requested.

D. Upon receipt of the lease packet via certified mail, the state wind lessee has 20 days from the date on the certified mail receipt or, if no date is affixed thereon, from the date the Office of Mineral Resources receives the certified mail receipt, to return one fully executed original lease contract and the recordation information from each parish wherein it is recorded to the Office of Mineral Resources. Failure to return one fully executed original lease contract and the recordation information from each parish wherein it is recorded to the Office of Mineral Resources within 20 days may result in forfeiture of the lease including the dollar amount (bonus) and 10 percent administrative fee. Further, failure to follow the notarization requirements of R.S. 35:12 shall cause the lease to be rejected.

E. A party may request proof that a particular state wind lease granted by the State Mineral Board was timely executed by using the official form available from the Office of Mineral Resources. Proof of timely execution of lease consists of a certificate issued by the Office of Mineral Resources certifying that the lease was received in the Office of Mineral Resources, duly executed by the lessee, within the allotted 20 day period. There is a fee of $5 for providing proof of timely execution of lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:266 (February 2008).

§1025. Transfer of Interest in or Assignment of a State Wind Lease

A. Prior to execution and recordation of a transfer of interest in or assignment of a state wind lease, a prospective transferee or assignee of a state wind lease shall schedule a pre-transfer meeting with and submit a transfer packet to the Office of Mineral Resources no later than the State Mineral Board regular meeting for the month prior to the State Mineral Board regular meeting at which the item is to appear on the State Mineral Board docket for approval.

B. The transfer or assignment shall be docketed for State Mineral Board approval. No transfer or assignment in relation to any state wind lease shall be valid unless approved by the State Mineral Board. Failure to obtain State Mineral Board approval of any transfer or assignment of a state wind lease prior to transfer or assignment shall subject the transferor or assignor and the transferee or assignee, jointly, severally and in solido, to liquidated damages of $100 per day beginning on the first day following the execution of the transfer or assignment.

C. All parties to transfers or assignments in relation to any state wind lease shall be registered prospective leaseholders with the Office of Mineral Resources. Transfers or assignments shall not be granted to prospective leaseholders that are not currently registered with the Office of Mineral Resources as set forth under forth under §1007.B.

D. The transfer packet shall contain the following items:

1. two original, unexecuted, unrecorded transfer or assignment instruments:

a. provide the marital status of the assignor if the assignor is an individual and, if applicable, the spouse's name and space for the spouse's signature to be affixed thereon;

b. designate the operator and the party who shall be the principal state wind lessee authorized to act on behalf of all co-lessees and attach proof of such agency;

c. after State Mineral Board approval, the transfer or assignment instrument must be executed by both assignor and assignee (and spouse(s), if appropriate), with each signature duly witnessed and a notarized witness acknowledgement provided for each, or the assignee (and spouse, if appropriate) shall execute an acceptance by assignee form, with the signature duly witnessed and notarized, and a copy attached to each of the transfer instruments;

2. a designation of principal state wind lessee and operator form completed by each prospective leaseholder;

3. a separate statement of conveyance—wind lease form completed for each state wind lease impacted by the transfer and reflect only the gross working interest in the lease existing before and after the conveyance (no net revenue interests are to be considered or reported);

4. a proposed plan of operations that includes all the items set forth in §1017.C.3.a-i;

5. any environmental impact documentation supplementing and updating §1011.C.8;

6. a list of project participants who are or will be participating in the planning, predevelopment, construction, operation, maintenance, remediation, and/or decommission phases of the proposed project, and a brief description of their role. This list shall be supplemented for each new project participant;

7. a summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of such financing;

8. a list of governmental entities including each federal, state, parish and local governmental entity that has jurisdiction in the nomination area and for each, the contact person name, title, office address, telephone and fax numbers, and email, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;

9. if state wind lease operations have commenced, general liability insurance in a form acceptable to the State Mineral Board as set forth in §1029.A.2 and financial security in a form acceptable to the State Mineral Board as set forth in §1029.A.3;

10. a docket fee payment in the amount of $100 made payable to the Office of Mineral Resources to cover the cost of preparing and docketing transfers or assignments of state wind leases. A personal or business check is acceptable;

11. any other information and documentation required by the Office of Mineral Resources.

E. After receiving State Mineral Board approval of the transfer or assignment, record the approved transfer instrument and the approval resolution in the appropriate parish(es) per the approval resolution and furnish the Office of Mineral Resources with the recordation information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:266 (February 2008).

§1027. Partial or Full Release of a State Wind Lease

A. Upon expiration or termination of a state wind lease, in whole or in part, for any reason, the principle state wind lessee shall execute and record an appropriate instrument of release within 90 days of such expiration or termination in each parish wherein the leased premises are located and shall provide the State Mineral Board through the Office of Mineral Resources with a copy of the recorded instrument of release from each parish wherein it is recorded properly certified by the recorder for that parish. In the event the principle state wind lessee fails to comply, all the state wind lessees currently of record jointly, severally and in solido shall be subject to liquidated damages of $100 per day beginning on the ninety-first day after expiration or termination, as well as reasonable attorney fees and costs incurred should suit be brought for lease cancellation.

B. The release instrument shall provide the state wind lease number and be signed by the principle state wind lessee, with the signature duly witnessed and notarized. Failure to follow the notarization requirements of R.S. 35:12 shall be grounds for the release instrument to be rejected.

C. If a party wants to release only a portion of the leased acreage, he shall contain the whole of the retained acreage, including the buffer acreage within the boundaries set forth in §1029.C.1.a-c, within a single contiguous block of acreage. For a partial release only, the party shall also provide the following items.

1. A written property description, fully justified, using Microsoft Word. The first part shall describe and provide the amount of state owned acreage released. The second part shall describe and provide the amount of state owned acreage retained. Use X-Y Coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Use calculations, closures and ties to existing state wind leases that comply with generally accepted surveying standards. Provide one original paper copy and one electronic copy as a Word .doc file named "released.doc" on the release diskette.

2. A plat that clearly delineates the boundaries of and sets forth the state owned acreage amount released and the state owned acreage amount retained. Use an 8 1/2 x 11 copy of the most recent edition of the 7 1/2 minute USGS Quadrangle Map (scale 1" = 2000' or 1" = 3000'; or the block system of 1" = 4000', if applicable). Use X-Y Coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Use calculations, closures and ties to existing state wind leases that comply with generally accepted surveying standards. Provide one original paper copy and one electronic copy included as a .pdf file named "released.pdf" on the release diskette.

3. A .dxf file that contains only the boundary of the acreage portion to be released, named "released.dxf" and provided on the release diskette. This boundary shall be a single line with no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat.

4. A release diskette clearly labeled "State Wind Lease Release Diskette" that shall have the principal state wind lessee and project names affixed thereon and contain the written property description as a Word .doc file, the plat as a .pdf file, and the .dxf file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:267 (February 2008).

§1029. State Wind Lease Operations

A. The state wind lessee and state wind lease operator shall schedule a pre-operations meeting with and submit an operations packet to the Office of Mineral Resources at least 30 days prior to commencement of construction. The operations packet shall contain the following items:

1. notice of beginning of wind lease operations form;

2. proof of general liability insurance for the leased premises in the amount of at least $1,000,000 issued by an insurer to whom A.M. Best Company has given not less than an A rating, specifically covering all damages, and name as insured the state of Louisiana and its departments, agencies and boards:

a. subsequent to the commencement of construction, an updated proof of general liability insurance is required to be submitted by January 31 of each year. Failure to submit updated proof of general liability insurance may cause the Office of Mineral Resources to levy liquidated damages of $100 per day until such proof is received;

3. financial security in a form acceptable to the State Mineral Board. The financial security amount for individual turbines shall be, at a minimum, $150,000 per turbine for turbines in one location. Blanket financial security for lessees and operators with wind leases in more than one area shall be calculated at a minimum of $150,000 per turbine divided by the number of different wind farm locations. Compliance with this financial security requirement shall be provided by any of the following or a combination thereof:

a. a certificate of deposit issued in sole favor of the Louisiana Department of Natural Resources in a form prescribed by the board from a financial institution acceptable to the board; or

b. a performance bond in sole favor of the Louisiana Department of Natural Resources in a form prescribed by the board issued by an appropriate institution authorized to do business in the state of Louisiana; or

c. a letter of credit in sole favor of the Louisiana Department of Natural Resources in a form prescribed by the board issued by a financial institution acceptable to the board;

4. an updated plan of operations that includes all the items set forth in §1017.C.3.a-I;

5. any updated environmental impact documentation supporting §1011.D.8;

6. an updated list of project participants as set forth in §1017.C.5;

7. any other information and documentation required by the Office of Mineral Resources.

B. At the expiration of the primary term, production of wind generated electric power shall be required to maintain the lease in force. If the lessee is producing wind generated electric power, the lease shall continue in force so long as production of wind generated electric power continues without lapse of more than 180 days. Any lapse in production of wind generated electric power greater than 180 days shall result in automatic termination of the lease.

C. On or before five years after the lessee commences the production of wind generated electric power on the lease, or five years from the end of the primary term, whichever is sooner (said date being the "Undeveloped Acreage Release Date"), the lessee shall release undeveloped acreage pursuant to the requirements of this Subpart, as well as those set forth in §1027.

1. Lessee shall survey the exact locations of any physical improvements that it has made upon the property including, but not limited to, turbines, towers, controller boxes, foundations, guy wires, roads, overhead and underground electrical wires, communication lines, poles and cross members, and substations and transmission facilities, and shall further show on such survey the areas of land containing the improvements with the following boundaries:

a. approximately 50 feet from the closest point on which a meteorological tower, road, guy wire, or transmission line is located;

b. approximately 150 feet from the perimeter of any substation; and

c. approximately 400 feet from the axis of horizontal rotation of any turbine.

2. Lessee shall contain the whole of the retained acreage, including the buffer acreage within the boundaries set forth in Subparagraphs 1.a-c, within a single contiguous block of acreage.

D. Any and all wind data collected during the primary term of the lease by the state wind lessee shall be released to public record at the end of the primary term.

E. The Office of Mineral Resources may require periodic reporting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:267 (February 2008).

§1031. State Wind Lease Electric Power Production Royalty Payment and Reporting

A. A state wind lease shall contain a provision permitting the state, at its option, to take in kind all or any part of the portion due it as royalty of any wind generated electric power produced from the leased premises. Unless the state elects to exercise this in kind option, which option is expressly reserved by the state and which is to be exercised by written notice by the state to the state wind lessee ("lessee") at any time and from time to time while a state wind lease is in effect and either prior or subsequent to acceptance by the state of royalties other than in kind, it being understood that nothing contained in a state wind lease shall ever be interpreted as limiting or waiving this option, the lessee shall pay to the state as electric power production royalty an amount that shall be no less than the minimum amount set by the State Mineral Board of the lessee's gross revenues. For the purposes of a state wind lease, *gross revenues* shall mean and include:

1. all gross receipts of lessee from the sale of electricity generated by lessee on the leased premises; provided, however, that if electricity is sold to a subsidiary or affiliate of lessee, then, and only then, the gross receipts from the sale of electricity under such contract shall be calculated using a sale price of not less than the arithmetical average of the prices paid by any purchaser or purchasers (including lessee or any subsidiary or affiliate of lessee) for electricity produced in Louisiana during the calendar year immediately preceding the year in which such electricity production from the leased premises occurs; plus

2. the greater of the gross proceeds received by either lessee or any subsidiary or affiliate of lessee from the sale of any credits, credit certificates or similar items such as those for greenhouse gas reduction, or the generation of green

power, renewable energy or alternative energy, created by any governmental authority and generated by wind energy development on the lease; but specifically excluding any and all federal production tax credits, investment tax credits and any other tax credits which are or will be generated by wind energy development on the lease; plus

3. the greater of gross proceeds or other cash benefits received by either lessee or any subsidiary or affiliate of lessee in connection with or under or derived from any agreement, compromise, settlement, judgment or arrangement for or relating to the sale, use or other disposition of electricity generated or capable of being generated from the lease; plus

4. anything of value received by the state wind lessee in return for electricity.

B. All royalties accruing under a state wind lease (including those paid in kind) shall be without deduction for the cost of producing, interconnecting, transporting and otherwise making electric production available for sale or use at the delivery side of the substation.

C. Prior to the first royalty payment, lessee shall complete a payor notification form available from the Office of Mineral Resources. If the payor attributable to a state wind lease changes between payment dates without notification to the Office of Mineral Resources of the change and without submission of the current mailing address, telephone number, and email address for the new payor prior to the next payment, the new payor shall be subject to liquidated damages of $1,000. The State Mineral Board may waive all or any part of the liquidated damages based on a consideration of all factors bearing on the issue.

D. The first payment of royalty shall be made within 120 days following commencement of production of wind generated electric power from the leased premises. Thereafter, royalty shall be paid by the twenty-fifth of the second month following that in which wind generated electric power is produced. In the event any royalty payment is not correctly or timely made, lessee shall pay legal interest, until paid, on royalty owing under the terms of this lease commencing the date such royalty is due and payable, along with damages, attorney fees, and costs. The state may also seek dissolution of the lease.

E. A state wind lessee shall report royalty payments on the official royalty reporting form available from the Office of Mineral Resources. Payment shall accompany the official royalty reporting form. Payments equal to or less than $9,999 may be made by personal or business check. Payments greater than $9,999 shall be made by electronic wire transfer. In all cases, the payee shall be the Office of Mineral Resources.

F. A state wind lessee shall keep true, accurate and complete books, records, accounts, contracts and data sufficient to support and verify the calculation of all amounts due under the lease. The state or any representative of the state shall have the right at all reasonable times and upon the provision of reasonable notice, to inspect the books, accounts, contracts, records, and any other relevant data, in possession or control of lessee and pertaining to the production, transportation or sale of electricity produced from the lease premises, including, without limitation, statements, documents, records or other data, from third parties which verify price, value or quantity of electricity generated on the lease premises. Any such inspection and review shall take place at the office of lessee, unless another location is otherwise agreed to by the state and lessee.

G. Should a state wind lessee contest royalty payment or any form of payment under a state wind lease, including requests for recoupment of any alleged overpayment of royalty, or present any claim, dispute or question pertaining to the terms, conditions, obligations, and duties expressed or implied in a state wind lease, the Office of Mineral Resources may collect a fee of $35 per hour for each hour or portion thereof spent in verification of any such contest, claim, dispute, or question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:268 (February 2008).

§1033. State Wind Lease Decommissioning

A. Definitions to be used in this Section:

Decommissioning—ending wind energy operations and returning the lease to a condition that meets the requirements of the Minerals Management Service, U.S. Department of the Interior, as required by R.S. 41:1732.C, as well as the requirements of the Louisiana Department of Natural Resources, State Mineral Board and Office of Mineral Resources, and the requirements of any other agencies that have jurisdiction over decommissioning activities.

Facility—any installation used for wind energy activities that is permanently or temporarily attached to state lands or water bottoms. Facilities may include obstructions.

Obstructions—structures, equipment or objects that were used in wind energy operations that, if left in place, would hinder other users of the state lands or water bottoms. Obstructions may include, but are not limited to, wind turbines, towers, pads, platforms, templates, pilings, shell mounds, overhead and underground electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities, roads, meteorological towers and wind measurement equipment, control buildings, maintenance yards, transmission towers, wires, cables, substations, and related facilities and equipment.

B. Lessees and owners of operating rights are jointly and severally responsible for meeting decommissioning obligations for facilities and obstructions on leases, as the obligations accrue and until each obligation is met. In this Section, the terms *you* or *I* refer to lessees and owners of operating rights, as to facilities installed under the authority of a lease.

C. You accrue decommissioning obligations when you install a facility, create an obstruction to other users of the state lands and water bottoms, are or become a lessee or the owner of operating rights of a lease on which there is a facility or an obstruction, or re-enter a facility or an obstruction that was previously abandoned.

D. When your facilities are no longer useful for operations, you shall get approval from the Office of Mineral Resources before decommissioning facilities and then permanently remove all facilities and obstructions created by your lease operations in a manner that is safe, does not unreasonably interfere with other users of the state lands or water bottoms, and does not cause undue or serious harm or damage to the human, wildlife, aquatic, or coastal environment.

E. You shall submit decommissioning applications and receive approval and submit subsequent reports according to the table in this Subpart.

Decommissioning Applications and Reports Table		
Decommissioning Applications and Reports	**When to Submit**	**Instructions**
1. Final removal application for a facility	Before removing a facility	Include information required under Subpart G
2. Post-removal report for a facility	Within 30 days after you remove a facility	Include information required under Subpart I
3. Site clearance report for a facility	Within 30 days after you complete site clearance verification activities	Include information required under Subpart N

F. You shall remove all facilities within one year after the lease terminates unless you receive approval to maintain a facility to conduct other activities. Before you may remove a facility, you shall submit a final removal application to the Office of Mineral Resources for approval and include the information listed in Subsection G. You shall remove a facility according to the approved application. You shall notify the Office of Mineral Resources at least 48 hours before you begin the removal operations.

G. You shall submit a final removal application to remove a facility to the Office of Mineral Resources for approval. Provide one paper copy and one electronic copy of the final removal application. The final removal application shall include the following, as applicable:

1. applicant identification including lease operator, address, contact person and telephone number, and shore base;

2. facility identification including facility name/ID number, location (lease, area, X-Y coordinates based on the Louisiana Coordinate System of 1927, block name and number), year installed, proposed date of removal (month/year), and water depth;

3. description of the facility you are removing including configuration (attach a photograph or a diagram), size, brief description of soil composition and condition, the maximum removal lift weight and estimated number of main lifts to remove the facility, and any other pertinent information;

4. a description, including anchor pattern, of the vessel(s) you will use to remove any facility from state water bottoms;

5. identification of the purpose, including lease expiration date and reason for removing the facility;

6. a description of the removal method, including a brief description of the method you will use. If you are using explosives, the type of explosives, number and sizes of charges, whether you are using a single shot or multiple shots, if multiple shots, the sequence and timing of detonations, whether you are using a bulk or shaped charge, depth of detonation below ground level or mud line (as applicable), whether you are placing the explosives inside or outside of the facility, and a statement whether or not you will use transducers to measure the pressure and impulse of the detonations;

7. if removing a facility from state water bottoms, whether you will use divers or acoustic devices to conduct a pre-removal survey to detect the presence of aquatic life and a description of the proposed detection method;

8. your plans for transportation and disposal (including as an artificial reef) or salvage of the removed facility;

9. if available, the results of any recent biological surveys conducted in the vicinity of the structure and recent observations of wildlife or aquatic life at the facility site;

10. your plans to protect archaeological and sensitive biological features during removal operations, including a brief assessment of the environmental impacts of the removal operations and procedures and mitigation measures you will take to minimize such impacts;

11. your plans to return and restore the state lands or water bottoms to a condition as nearly equivalent to that which existed before said operations were conducted and/or facility was constructed;

12. if removing a facility from state water bottoms, a statement whether or not you will use divers to survey the area after removal to determine any effects on aquatic life.

H. Unless the Office of Mineral Resources approves an alternate depth under Paragraph 2 of this Subpart, you shall remove all facilities on state water bottoms to at least 15' below mud line and you shall remove all facilities on state lands to at least 2' below plow depth. The Office of Mineral Resources may approve an alternate removal depth if:

1. the remaining facility or part thereof would not become an obstruction to other users of the state lands and water bottoms, and geotechnical and other information you provide demonstrate that erosional processes capable of exposing the obstructions are not expected; or

2. if removing a facility from state water bottoms, you determine, and the Office of Mineral Resources concurs, that

you must use divers and the seafloor sediment stability poses safety concerns.

I. Within 30 days after you remove a facility, you shall submit a post-removal report to the Office of Mineral Resources that includes the following:

1. a summary of the removal operation including the date it was completed;

2. a description of any mitigation measures you took; and

3. a. statement signed by your authorized representative that certifies that the types and amount of explosives you used in removing the facility were consistent with those set forth in the approved final removal application.

J. The Office of Mineral Resources may grant a departure from the requirement to remove a facility by approving partial facility removal or toppling in place for conversion to an artificial reef or other use if you meet the following conditions:

1. the structure becomes part of a state artificial reef program, and the responsible state agency acquires a permit from the U.S. Army Corps of Engineers and accepts title and liability for the facility; and

2. you satisfy any U.S. Coast Guard (USCG) navigational requirements for the facility.

K. Within 60 days after you remove a facility from state water bottoms, you shall verify that a site is clear of obstructions by using one of the following methods.

1. For a facility site in water depths less than 300 feet, you shall drag a trawl over the site.

2. For a facility site in water depths 300 feet or more, you shall drag a trawl over the site, scan across the site using sonar equipment or use another method approved by the Office of Mineral Resources if the particular site conditions warrant.

L. If you drag a trawl across the site, you shall comply with the following.

1. Drag the trawl in a grid-like pattern across a 1,320 foot radius circle centered on the location of the facility.

2. Trawl 100 percent of the limits, described in Subparagraph 1 above, in two directions.

3. Mark the area to be cleared as a hazard to navigation according to USCG requirements until you complete the site clearance procedures.

4. Use a trawling vessel equipped with a calibrated navigational positioning system capable of providing position accuracy of +/-30 feet.

5. Use a trawling net that is representative of those used in the commercial fishing industry (one that has a net strength equal or greater than that provided by No. 18 twine).

6. Ensure that you trawl no closer than 300 feet from a shipwreck, and 500 feet from a sensitive biological feature.

7. If you trawl near an active pipeline, you must meet the requirements in the following table.

For-	You Must Trawl-	And You Must-
1. Buried active pipelines		First contact the pipeline owner or operator to determine the condition of the pipeline before trawling over the buried pipeline.
2. Unburied active pipelines that are 8 inches in diameter or larger	no closer than 100 feet to the either side of the pipeline	Trawl parallel to the pipeline. Do not trawl across the pipeline.
3. Unburied smaller diameter active pipelines in the trawl area that have obstructions (e.g., pipeline valves) present	no closer than 100 feet to either side of the pipeline	Trawl parallel to the pipeline. Do not trawl across.
4. Unburied active pipelines in the trawl area that are smaller than 8 inches in diameter and have no obstructions present.	parallel to the pipeline	

8. Ensure that any trawling contractor you may use has no corporate or other financial ties to you and has a valid commercial trawling license for both the vessel and its captain.

M. If you do not trawl a state water bottom site, you can verify that the site is clear of obstructions by using any of the methods shown in the following table.

If You Use-	You Must-	And You Must-
1. Sonar	Cover 100 percent of the appropriate grid area.	Use a sonar signal with a frequency of at least 500 kHz.
2. A diver	Ensure that the diver visually inspects 100 percent of the appropriate grid area.	Ensure that the diver uses a search pattern of concentric circles or parallel lines spaced no more than 10 feet apart.
3. An ROV (remotely operated vehicle)	Ensure that the ROV camera records videotape over 100 percent of the appropriate grid area.	Ensure that the ROV uses a pattern of concentric circles or parallel lines spaced no more than 10 feet apart.

N. Within 60 days after you remove a facility from state lands other than water bottoms, you shall verify that you have returned and restored the state lands to a condition as nearly equivalent to that which existed before said operations were conducted and/or facility was constructed.

O. You shall submit a site clearance report to the Office of Mineral Resources within 30 days after you complete the verification activities. The site clearance report shall include the following:

1. a letter signed by an authorized company official certifying that the facility site area is cleared of all obstructions and that a company representative witnessed the verification activities;

2. a letter signed by an authorized official of the company that performed the verification work for you certifying that they cleared the facility site area of all obstructions;

3. the date the verification work was performed and if applicable, the vessel used;

4. the extent of the area surveyed;

5. the survey method used;

6. the results of the survey, including a list of any debris removed or, if applicable, a statement from the trawling contractor that no objects were recovered; and

7. a post-trawling job plot or map showing the trawled area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 34:269 (February 2008).

Chapter 15. Administration of the Fisherman's Gear Compensation Fund

§1501. Definitions

A. As used in these regulations the following terms and phrases shall have the definition ascribed to them.

Claimant—any vessel owner who files a claim under the provisions of these regulations and R.S. 56:700.1-700.5.

Commercial Fisherman—any citizen of the state of Louisiana who possesses a valid Louisiana residential commercial fishing license and who derives a primary source of his or her income from the harvesting of living marine resources for commercial purposes.

Department—the Louisiana Department of Natural Resources and Regulatory Authority means the secretary thereof and the personnel appointed or employed thereby who administer the commercial fishermen's gear compensation fund.

Fishing Gear—any licensed marine vessel and any equipment, whether or not attached to a vessel, in which are used in the handling or harvesting of commercial marine resources.

Fund—the Fisherman's Gear Compensation Fund.

Hearing Examiner—the person(s) employed or appointed by the regulatory authority to conduct hearings, take oral and written testimony from claimants and other witnesses, and make recommendations to the regulatory authority on the validity and payment of claims.

Obstruction—any object, obstacle, equipment or device located in state water within the geographical boundary of the fund whether natural or man made; provided that this definition shall not be applied to obstructions floating on the surface which could be avoided by a reasonably prudent fisherman.

Primary Source of Income—that source of revenue earned by a claimant from commercial fishing endeavors which is deemed by the regulatory authority to constitute a fundamental source of such claimant's annual earned income. Annual earned income shall be income earned from all sources reportable on state and federal income tax returns. Any claimant who presents satisfactory proof that at least 50 percent of his or her annual income in the year preceding the year of the claim was earned from commercial fishing endeavors shall be deemed to derive a primary source of his or her income therefrom.

Satisfactory Proof—as it relates to demonstrating a primary source of income—a certified copy of state and federal income tax returns together with related financial data. In the case of a claimant being a corporation, a certified copy of the state and federal corporate tax return shall be submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 14:545 (August 1988), LR 21:956 (September 1995).

§1503. Geographic Boundary of Fund

A. The Fishermen's Gear Compensation Fund shall be limited to the payment of no more than two claims for damage or loss of fishing gear filed by qualified claimants during a fiscal year applicable to the department (July 1-June 30). Claims must be received by the fund within the period indicated. A single claim may not exceed $5,000, but in no event shall any payment of a claim exceed the amount of gross income earned by the claimant from fishing endeavors in the year preceding the claim, and shall be based on damage or loss of fishing gear due to an encounter with an obstruction in state waters located below the northern boundary of the Louisiana Coastal Zone as set forth in R.S. 49:213.4, and depicted on official maps of the sate regulatory authority having jurisdiction over coastal zone management, and extending seaward to the limits of Louisiana's territorial jurisdiction.

B. No claim shall be accepted or paid for damages or loss sustained from an encounter with an obstruction which occurs in waters overlying the federal domain of the outer continental shelf or north of the northern boundary of the Louisiana Coastal Zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 11:29 (January 1987), LR 21:956 (September 1995).

§1505. Claim Filing Procedure—Initial Reports

A.1. Within 30 days of encountering an obstruction in state waters covered by the fund, from which damage or loss to fishing gear is sustained and for which a written claim will be made for reimbursement from the fund, as otherwise provided in §1509 of these regulations, the commercial

fisherman encountering the obstruction shall notify the regulatory authority, orally or in writing, and provide the following information:

a. claimant's name, address and telephone number;

b. the name and registration number of the commercial fishing vessel involved;

c. the Louisiana residential commercial fishing license number of the claimant;

d. the location of the vessel and obstruction at the time of encounter by one of the methods described in §1507 of these regulations whenever possible;

e. the date and time of day that the obstruction was encountered;

f. identification of the nature of the obstruction; and

g. a description of the nature of the damage or loss sustained for which a written claim will be made and the estimated amount, in dollars, of the damage or loss, if known.

2. The requirements of the initial notice may be waived in whole or in part by the regulatory authority for good cause shown.

B. Upon receipt of the information required by Subsection A above, the regulatory authority shall establish a file in the name of the commercial fisherman, containing all of the information above. On a map showing all state waters covered by the fund, the regulatory authority shall indicate the location or approximate location of the obstruction, physically and by coordinates, if available.

C. Pending receipt of the written claim, as otherwise required herein, the regulatory authority shall attempt to ascertain the lessees or grantees of rights of state water bottoms proximate to the location of the obstruction on which the obstruction was encountered and furnish their names to the claimant.

D. The regulatory authority may devise procedures for informing commercial fishermen of the location of all obstructions reported. Such procedures may include periodic dissemination of maps containing such information; the placement of buoys or markers at the site of such obstruction; or such other means as the regulatory authority deems reasonable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980).

§1507. Identification of Area of Obstruction

A. When an obstruction has been encountered by a qualified commercial fisherman from which encounter a claim for damages to the fund is made, the claim shall not be accepted unless accompanied by sufficient information by which to locate the area of the obstruction. Such information shall be conveyed on forms furnished by the department when available, or otherwise in a manner sufficiently clear to be usable by the department in charting the obstruction.

1. No future claim shall be filed by a qualified commercial fisherman for an encounter with an obstruction at the same location reported by the fisherman on a previous claim.

B. The information referred to in Subsection A of this Section shall include all of the information set forth in this Subsection to the extent possible. Where such information cannot be furnished, reasons for such inability shall be stated instead:

1. common name of the body of water in which the obstruction was encountered;

2. name of the parish in which the obstruction was encountered;

3. the date and time of day when the obstruction was encountered;

4. the depth of the water and the depth at which fishing gear was deployed at the point of encounter;

5. the position of the fishing vessel and the position of the obstruction at the point of encounter, to be specified by using one or more of the following methods of position fixing, using the most reliable method available aboard the vessel at the time of encounter:

a. Loran-C Readings. Provide time delay readings from at least two Loran-C pairs (e.g., 7980-W and 7980-Y). Readings from additional pairs should be provided if available from a particular Loran-C receiver installed. If a coordinate converter is being used, the latitude and longitude readings may be furnished;

b. distance (range) and direction (bearing) to fixed offshore objects such as lighthouses, light towers, and oil drilling or production platforms. Specify the name of each such object used;

c. distance and direction of fixed aids to navigation and land marks, which are identified on National Ocean Survey Charts, such as radio towers, jetty lights, etc.;

d. distance and direction to prominent landmarks which are not identified on National Ocean Survey charts but are readily identifiable for future reference;

e. Loran-A Readings. Provide time delayed readings from at least two Loran-A rates. Readings from additional rates should be provided if available. Identify any skywave time delay reading as such;

f. direction to radio beacons using a radio direction finder. Give each station's identifying call letters. Provide a copy of the radio direction finder deviation table if prepared for the fishing vessel;

g. distance and direction to floating navigational aids such as buoys. Identify any buoy by name, number, color, type and lightlist number if known;

h. alternate navigation methods may be used if they are available. These include Raydist, Decca, and similar electronic navigation systems that may be in use;

i. a celestial fix or line of sight may be used if no other navigation method is available. All calculations used shall accompany this method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:956 (September 1995).

§1509. Claims—General Form and Content

A. Claims shall be by affidavit, signed by the claimant on forms furnished by the department when available and shall contain, in addition to the requirements of §1507 herein, the following information:

1. the name, mailing address, telephone number, citizenship, and occupation of the claimant;

2. the name, address, and telephone number of each person representing the claimant in pursuing the claim;

3. the name of the fishing vessel involved, its type, size, homeport and, its U.S. Coast Guard documentation number and/or state registration number;

4. a statement of the type of fishing operation being conducted and a description of how the encounter occurred;

5. if an amount is claimed, the claim shall include:

a. the nature and extent of the damage and loss suffered; photographs of vessel damage which must show the claimed damage and the registration/documentation number and/or name of the vessel; a description of the gear involved and where pertinent, a list of components such as size, type, grade, etc.;

b. the amount claimed together with proof of ownership of the gear which was damaged or lost on the obstruction. Proof of ownership must include paid receipts together with proof of payment such as copies of money orders or bank cashier's checks for the gear. No receipts paid by "cash" will be accepted for gear purchased after the effective date of this rule;

c. the date, place and cost of acquisition of the gear damaged or lost;

d. an estimate from a commercial fishing gear repair or supply company, of the present replacement cost of the fishing gear and the repair cost of the fishing gear (if it is repairable). If fishing gear of the type damaged is usually made or repaired by the claimant, an estimate from a commercial fishing gear repair or supply company for the materials required to make the gear together with a notarized statement from the claimant that he or she makes his or her own gear may be used;

e. if the fishing gear is repaired or replaced before an award is made under this Part a copy of the invoice or receipt for the repair or replacement of the fishing gear; and the estimated salvage value of the fishing gear that is not repairable;

6. a detailed statement of the efforts made by claimant to identify, locate and collect damages for his loss from the person financially responsible therefor accompanied by copies of all correspondence related thereto;

7. a claim shall be deemed invalid if the claimant cannot, for any reason, produce the documentation required by this Section.

B. Written claims required by this Section shall be filed by claimant on or before 60 days from the due date of the initial report of damage or loss required by §1505 of these regulations.

C. The regulatory authority shall include the information received pursuant to this Section in the file established for the claimant. If the claimant's file is deemed to be incomplete or otherwise to contain insufficient information for proper disposition of the claim, the claimant shall be notified in writing within five days of such determination, and the additional information needed shall be requested. No claim shall be processed, nor funds paid, until the regulatory authority has received all information necessary to a proper disposition thereof.

D. Damages or losses which are covered by valid insurance or the federal Fishermen's Contingency Fund (50 CFR Part 296) shall not be reimbursable from the fund. No claimant shall include within a claim submitted any amounts for which such claimant has received or is entitled to receive reimbursement under an insurance policy or the federal program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:957 (September 1995).

§1511. Hearing Examiner; Small Claims; Adjudicatory Hearings

A. Upon acceptance by the regulatory authority of a claim as complete, and upon determination that all other reporting requirements in these regulations have been timely complied with by the claimant, the regulatory authority shall make disposition of the claim pursuant to the appropriate procedures as set forth below.

1. It may employ the services of experts or consultants in evaluating damage or loss whose sworn written or oral opinions or appraisals shall be made a part of the claimant's file or records as the case may be.

2. It may designate a hearing examiner to conduct the hearing.

3. It shall assign all claims for public hearing in compliance with the Louisiana Administrative Procedure Act, R.S. 49:951 et seq., and the general rules and regulations of the Department of Natural Resources, and especially with respect to notice and to the date on which objections to a claim must be presented in written form.

4. If no written objections to a claim are timely made:

a. the regulatory authority may make a preliminary evaluation of the claim or loss and if it does not exceed the sum of $500 and all essential requirements of these regulations are otherwise met by the claimant, it shall give notice of its intent to pay the claim in the manner as provided in Subsection F hereof. This notice may be combined with the notice of public hearing concerning it. If no objection is made to the payment of the claim at the public hearing, the regulatory authority may reimburse the claimant without further administrative delay;

b. at all hearings other than those provided for by Subparagraph 4.a:

i. the claimant must offer proof as to:

(a). his freedom from contributory negligence in causing his loss; and

(b). his good faith efforts to locate the financially responsible party to whom the obstruction, equipment, materials, structures or other items causing the claimed damage is attributable;

ii. on all other issues the regulatory authority may restrict the hearing to the introduction of evidence, proof, or testimony as to the ownership or location of the obstruction, the qualification of the claimant, the dollar value of the damage or loss or any other necessary information or facts not satisfactorily identified in the initial or full claim reports submitted. It shall notify the claimant of such restrictions and at the public hearing, claimant shall not be required to offer proof on matters other than those so restricted and those required by Clause 4.b.i above;

c. any person who has not made timely objection shall nevertheless be given an opportunity to be heard. The claimant need not, though he may, present further proof in support of his claim other than that required by Clause 4.b.i.

5. If written objections to a claim are timely made, the hearing shall be considered as an adjudicatory proceeding within the meaning of the Louisiana Administrative Procedure Act and the general rules and regulations of the Department of Natural Resources, and shall be conducted as such with full opportunity for responses, objections and other rights accorded by that Act and the regulations.

B. Monies from the fund shall be used to reimburse a claimant only for the cost of repair or replacement of fishing gear as to which damage or loss has been sustained under the scope of these regulations, and only to a maximum amount of $5,000 for each encounter with an obstruction or for each incident.

C. No reimbursement from the fund shall be made to any claimant where satisfactory evidence indicates that negligence of the claimant contributed to the damage or loss. If the regulatory authority determines that a claim arises from hitting or snagging an obstruction previously encountered by the claimant, a rebuttable presumption that the claimant is contributorily negligent must be overcome by him.

D. Any person aggrieved by a ruling or claim disposition made by the regulatory authority, a recommendation of the hearing examiner or other administrative action taken pursuant to these regulations or R.S. 56:700.1-700.5, shall have the right to request a rehearing, or to file an appeal with a court of proper jurisdiction.

E. The regulatory authority may establish written policies and procedures for the conduct of the adjudicatory hearings, the style and content of forms, or other administrative functions not inconsistent with the Louisiana Administrative Procedure Act. Such policies and procedures shall not be subject to notice and promulgation and rules or regulations, but shall be written and shall be made available to any interested person.

F. The regulatory authority shall publish in the *Louisiana Register* a monthly report of the number and total dollar amount of the claims filed, the number of claims denied, the number of claims paid and the total dollar amount of the claims paid, and the Loran C coordinate locations of each claim for which it is available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 16:416 (May 1990).

§1513. Penalties

A. The intentional rendering of a financial statement of account, which is known to be false, by anyone who is obliged to render an accounting pursuant to R.S. 56:700.1-700.5, or these regulations, shall be punishable pursuant to the provision of the Louisiana Criminal Code R.S. 17:70, False Accounting.

B. The filing or depositing, with knowledge or falsity, of any forged or wrongfully altered document, for record in any claim or proceeding before a hearing examiner or other administrator of the fund, shall be punishable pursuant to the provisions of the Louisiana Criminal Code, R.S. 17:133, Filing False Public Records.

C. The intentional making of a false written or oral statement in, or for use in any claim, proceeding or testimony before a hearing examiner or other administrator of the fund, under sanction of an oath, sworn affidavit or an equivalent affirmation, shall be punishable pursuant to the provisions of the Louisiana Criminal Code, R.S. 14:123, Perjury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.2.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:513 (August 1980).

§1515. Assessment of Fees

A. Effective November 1,1979, in order to establish the Fishermen's Gear Compensation Fund, a fee in the amount of $300 is levied upon each lessee of a state mineral lease, and each grantee of a state right-of-way which is located

within the coastal zone boundary as described in R.S. 49.213.4, October 20,1979.

1. For definition herein:

a. *Lessee of a State Mineral Lease*—the owner of the right to sever minerals from state owned water bottoms whether or not such right is derived by lease, operating agreement, or otherwise.

b. *Grantee of a State Right of Way*—the owner of a pipeline right-of-way grant and no other.

B. The balance in the Fishermen's Gear Compensation Fund is less than $250,000 and, pursuant to R.S. 56:700.2, (as amended, Act 337 of 1991) an additional fee of $500 will be assessed on each lessee of a state mineral lease and each grantee of a state pipeline right-of-way located in the coastal zone of Louisiana, effective April 20, 1993.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.2.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:328 (October 1979), amended LR 9:15 (January 1983), LR 10:546 (July 1984), LR 11:1178 (December 1985), LR 12:602 (September 1986), LR 13:360 (June 1987), LR 15:497 (June 1989), LR 16:320 (April 1990), LR 17:605 (June 1991), LR 18:391 (April 1992), LR 19:501 (April 1993).

§1517. Rules for Labeling Equipment, Tools, Materials, and Containers Used by the Oil and Gas Industry within Louisiana Coastal Waters

A. For the purposes of this regulation, the term *waters of the coastal zone* means those rivers, streams, lakes, and all other water courses within the boundaries of the Louisiana coastal zone, R.S. 49:214.24.

B. Materials, equipment, tools, containers, and other items used in the waters of the coastal zone which are of such shape and configuration that they are likely to snag or damage fishing devices shall be handled and marked as follows:

1. all loose material, small tools and other objects shall be kept in marked containers when not in use or before transport in waters of the coastal zone;

2. all cable, chain, tires or wire segments shall be recovered after use and securely stored;

3. skid-mounted equipment, portable containers, spools or reels, materials on the reels, and drums shall be labeled with the owner's name prior to use or transport in waters of the coastal zone;

4. all labels shall clearly identify the owner and shall be durable enough to resist the effects of environmental conditions to which they are exposed.

C. Each incident of items lost overboard shall be reported initially by telephone to the Department of Natural Resources (225) 342-0122 during regular business hours, and also on a standard form to be provided by the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 17:272 (March 1991).

Chapter 17. Claiming Severance Tax Exemption under Act 673 of 1986 (R.S. 47:648.11)

§1701. Rules for Claiming Severance Tax Exemption under Act 673 of 1986 (R.S. 47:648.1)

A. R.S. 47:648.1 established a qualified severance tax exemption on the first 10,000 barrels of oil produced annually from a well which is drilled between July 15, 1986 and July 15, 1987. This exemption is qualified in that it applies only to the first 50 barrels of oil removed from the ground in each day, although the 10,000 barrel limitation is calculated from the total production of the well. This exemption may be claimed from the date of first production from each well until July 15, 1990, except for months when the value of oil, as reported to the Department of Revenue and Taxation under R.S. 47:633(7), exceeds $21 per barrel.

B. The tax exemption does not apply to:

1. condensate, distillate, or similar natural resources produced from a well classified as a gas well by the assistant secretary of the Office of Conservation;

2. casinghead gas produced with oil from a well drilled between July 15, 1986 and July 15, 1987;

3. oil from a well on which drilling began prior to July 15, 1986;

4. oil from a well on which drilling is done after July 15,1987;

5. oil from a well with a price per barrel greater than $21 as reported under R.S. 47:633(7);

6. oil from a well following, or in excess of, the first 50 barrels produced on any day;

7. oil from a well following, or in excess of, the first 10,000 barrels produced in any year.

C. The Department of Revenue and Taxation will provide forms for claiming the severance tax exemption, together with instructions. The amount of exempt production will be reported each month by the producer of the oil. A copy of the producer's report will be provided by the producer to the party remitting the taxes. The taxpayer will report the exempt sales on the SEV Old under Tax Rate 7, or upon such other forms as may be specified by the Department of Revenue and Taxation. No production shall be exempt from severance taxes unless the taxpayer first provides an Office of Conservation certification that the well qualifies for the exemption, to the Department of Revenue and Taxation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:648.11.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 12:771 (November 1986).

Chapter 19. Louisiana Home Energy Rating

Subchapter A. Energy Rated Homes

§1901. ERHL Fee Schedule

A. As required by R.S. 36:354, the following fees shall be assessed in order to provide funding for services offered by the new Energy Rated Homes of Louisiana section of the Department of Natural Resources, Technology Assessment Division, Energy Section.

Ratings	
Regular Ratings	$50/hr. with minimum 4 hours
Ratings Requiring Post Retrofit Inspection	$50/hr. with minimum 5 hours
House Plan Review	$50/hr. with minimum 2 hours
Residential Walk-Through Audits	$50
Training	$10/hr./student or actual costs incurred
Building Diagnostics	
Energy Use	$ 50/hr.
Moisture Damage	$ 50/hr.
Indoor Air Quality	
On-Site Time	$ 50/hr.
Equipment Charges for 10-Day Monitoring Period	$200

B. All fee payments shall be made by check, draft or money order to Energy Rated Homes of Louisiana, Department of Natural Resources, Technology Assessment Division, Energy Section, P.O. Box 44156, Baton Rouge, LA 70804-4156.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Energy Division, LR 21:182 (February 1995), repromulgated LR 21:272 (March 1995).

Subchapter B. Energy Rater Training and Certification

§1921. Certification of Home Energy Raters

A. Definitions. For the purpose of this Section, the following words, unless the context does not permit such meaning, shall have the meanings indicated.

Department—the Louisiana Department of Natural Resources.

Energy Rating—a site inventory and descriptive record of features impacting the energy use of the building. This includes, but is not limited to: all building component descriptions (locations, areas, orientations, construction attributes and energy transfer characteristics); all energy using equipment and appliance descriptions (use, make, model, capacity, efficiency and fuel type), all energy features and results of tests and computations.

Existing Residential Building—a completed residential occupancy building, including residential occupancy dwellings in mixed occupancy buildings for which a certificate of occupancy, or equivalent approval for occupancy, has been issued.

New Residential Building—newly constructed residential occupancy buildings, including new residential occupancy dwellings of single or multifamily occupancy, permitted for construction after the effective date of this rule.

B. General Provisions

1. Rules provided herein shall apply to new and existing residential buildings including single-family and multifamily, site built residential buildings except those specifically exempted herein.

2. The energy rating for new and existing residential buildings shall be determined using only software approved by the Louisiana Department of Natural Resources for the southern climate. If a rating is performed on a proposed residential building, the rating shall be clearly labeled as a "rating based on plans".

3. Beginning with the implementation date of this rule, no person may provide a rating for residential buildings in Louisiana unless such a person has been certified as provided by this rule. To perform a rating for any residential building as required by this rule, the person performing the rating must be certified by the Louisiana Department of Natural Resources, or its designee.

4. Certification will be valid for one year following the date of issuance. No rating activity shall be conducted after the expiration of the term of certification. A duplicate certificate may be obtained by written request to the department.

5. An application for annual certification renewal shall be submitted on Form #ERHL-704, herein incorporated by reference, with a renewal fee of up to the maximum allowable by the state. In addition to the annual renewal fee, a certified home energy rater must, over a three-year period, have completed 12 credit hours of continuing education in courses accepted by the department for certification renewal. Acceptable courses shall, in general, be those dealing with energy use in buildings, building science, or building systems (including heating, ventilation and air conditioning), building design or construction, codes or plan review, financing or selling residential buildings, and courses on energy rating systems).

C. The following qualifications, at a minimum, are required for certification as a home energy rater.

1. The individual shall submit an application on the Louisiana Department of Natural Resources Form #ERHL-704, and pay the appropriate application fee of up to the maximum allowable by the state. The form is available by writing to the Louisiana Department of Natural Resources,

617 N. Third Street Baton Rouge, LA 70804 (the department).

2. Individuals applying for certification as home energy raters shall attend a training program provided by the department, or its designee and shall demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residences by passing department tests specific to residences rated for certification. At the department's discretion, individuals may also qualify for certification without attending the department's training program by providing a certificate of certification as a home energy rater from an accredited training provider approved by the department and passing the department's challenge tests. Individuals applying for certification as home energy raters in this manner must also demonstrate achievement of a level of knowledge and proficiency so as to successfully perform residential energy audits to rate new and existing residential buildings as part of their certification process by performing a minimum of seven home energy ratings, three of which must be performed under the supervision of the department or its designee.

3. No certification shall be approved unless the applicant demonstrates to the department that the following conditions are met.

a. The applicant has filed an accurate and complete application describing compliance with the relevant certification requirements along with the application fee.

b. The applicant is capable of performing the activities for which he/she is seeking certification

c. The applicant has not shown a lack of ability or intention to comply with this rule.

d. The applicant has conducted all energy rating and compliance related activities forthrightly and honestly.

4. Recertification is required at least every three years from the rater's last date of certification. For recertification, the applicant shall attend training on changes impacting the rating system provided by the department or its designee, and demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residential buildings by passing a department test applicable to the buildings being rated. The fee for recertification shall be the annual certification renewal fee. The home energy rater shall be required to satisfactorily perform and complete one home energy rating, accompanied and evaluated by another randomly chosen certified home energy rater, as a requirement for recertification and to comply with the department's guidelines requirement for periodic peer review and reevaluation of raters. Home energy raters shall also be required to serve as a peer evaluator at least once within three years before being recertified.

D. Reporting Requirements. Certified raters shall submit all ratings to the Louisiana Department of Natural Resources (the department) in electronic format, either via electronic mail (e-mail) or, at the department's discretion with prior written approval from the department, in some other electronic format.

E. The home energy rating report provided to the client shall include the following:

1. the certified rater's signature typed or printed name and rater certification number;

2. the date that the rating was completed; and

3. contact information for the home energy rater including address, and phone number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354(A)(3) and (E)(2).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 31:934 (April 2005).

§1923. Certification of Existing Small Commercial Buildings Energy Raters

A. Definitions. For the purpose of this Section, the following words, unless the context does not permit such meaning, shall have the meanings indicated.

Department—the Louisiana Department of Natural Resources.

Energy Rating—a site inventory and descriptive record of features impacting the energy use of the building. This includes, but is not limited to: all building component descriptions (locations, areas, orientations, construction attributes and energy transfer characteristics); all energy using equipment and appliance descriptions (use, make, model, capacity, efficiency and fuel type); and all energy features, and computations.

ESCB Energy Raters—This includes all energy raters qualified, trained, and certified by the department to conduct energy ratings on existing small commercial buildings-up to and including 7000 square feet.

Existing Small Commercial Building (ESCB)—a completed small commercial building, buildings for which a certificate of occupancy, or equivalent approval for occupancy, has been issued-up to and including 7,000 square feet.

B. General Provisions

1. Rules provided herein shall apply to site built existing small commercial buildings, except those specifically exempted herein.

2. The energy rating for existing small commercial buildings shall be determined using only software approved by the Louisiana Department of Natural Resources for the southern climate. If a rating is performed on a proposed building, the rating shall be clearly labeled as a "rating based on plans".

3. Beginning with the implementation date of this rule, no person may provide an energy rating for small commercial buildings in Louisiana unless such a person has been certified as provided by this rule. To perform an energy rating for any existing small commercial building as required by this rule, the person performing the energy rating must be certified by the Louisiana Department of Natural Resources, or its designee.

4. Certification will be valid for one year following the date of issuance. No energy rating activity shall be conducted after the expiration of the term of certification. A duplicate certificate may be obtained by written request to the department.

5. An application for annual certification renewal shall be submitted on Form #ERHL-704, herein incorporated by reference, with a renewal fee of the maximum amount allowable by the state. In addition to the annual renewal fee, a certified Existing Small Commercial Building (ESCB) energy rater must, over a three-year period, have completed 12 credit hours of continuing education in courses accepted by the department for certification renewal. Acceptable courses shall, in general, be those dealing with energy use in buildings, building science, or building systems (including heating, ventilation and air conditioning), building design or construction, codes or plan review, financing or selling small commercial buildings, and courses on energy rating systems.

C. The following qualifications, at a minimum, are required for certification as an ESCB energy rater.

1. The individual shall submit an application on the Louisiana Department of Natural Resources Form #ERHL-704 (ESCB) and pay the appropriate application fee of up to the maximum amount allowable by the state. The form is available by writing to the Louisiana Department of Natural Resources, 617 N. Third Street Baton Rouge, LA 70804.

2. Individuals applying for certification as an Existing Small Commercial Building Energy Rater shall attend a training program provided by the department, or its designee and shall demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residences, and small commercial building by passing department tests specific to the buildings rated for certification. At the department's discretion, an individual may also qualify for certification as ESCB energy rater without attending the department's training program by providing a certificate of certification as an ESCB energy rater from an accredited training provider approved by the department and passing the department's challenge tests. Individuals applying for certification as ESCB energy raters in this manner must also demonstrate achievement of a level of knowledge and proficiency so as to successfully rate buildings by passing department tests specific to the type of building rated for certification. In addition, the rater candidate must complete seven ratings, four residential, and three small commercial while conducting three under the supervision of the department or its designee.

3. No certification shall be approved unless the applicant demonstrates to the department that the following conditions are met.

a. The applicant has filed an accurate and complete application describing compliance with the relevant certification requirements along with the application fee.

b. The applicant is capable of performing the activities for which he/she is seeking certification.

c. The applicant has not shown a lack of ability or intention to comply with this rule.

d. The applicant has conducted all energy rating and compliance related activities forthrightly and honestly.

4. Recertification is required at least every three years from the rater's last date of certification. For recertification, the applicant shall attend training on changes impacting the rating system provided by the department or its designee, and demonstrate achievement of a level of knowledge and proficiency so as to successfully rate residential, and small commercial buildings by passing a departmental test applicable to the buildings being rated. The fee for recertification shall be the annual certification renewal fee. The ESCB energy rater shall be required to satisfactorily perform and complete one home, and one small commercial building energy rating, accompanied and evaluated by another randomly chosen certified home energy rater, as a requirement for recertification and to comply with the department's guidelines requirement for periodic peer review and reevaluation of raters. Home energy raters and ESCB energy raters shall also be required to serve as a peer evaluator at least once within three years before being recertified.

D. Reporting Requirements. Certified home energy raters, and ESCB energy raters shall submit all ratings to the Louisiana Department of Natural Resources in electronic format, either via electronic mail (e-mail) or, at the department's discretion with prior written approval from the department, in some other electronic format.

E. The home energy rating report (or ESCB Report) provided to the client shall include the following:

1. the certified rater's signature typed or printed name and rater certification number;

2. the date that the rating was completed; and

3. contact information for the home energy rater including address, and phone number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354(A) (3) and (E) (2).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 31:935 (April 2005).

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 2. Oilfield Site Restoration

Chapter 21. Administration

§2101. Memorandum of Understanding

A. The Oilfield Site Restoration Commission, created within the Department of Natural Resources, the secretary, and the assistant secretary for the office of conservation have been delegated certain authority for the administration of this Part by Act 404 of the 1993 Regular Session of the Louisiana Legislature. A memorandum of understanding shall be prepared and signed by each of these entities for the purpose of delineating and agreeing on the authority and function to be served by and between each of them for the administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:397 (April 1995), repromulgated LR 21:471 (May 1995).

§2103. Oilfield Site Restoration Commission

A. The commission shall perform all duties and functions authorized or imposed upon it by the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature. The commission shall further enter into a memorandum of understanding in which it assumes the responsibilities and delegates the authority to the secretary according to the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature.

B. The commission shall receive and administer the oilfield site restoration fund and the site-specific trust accounts within the fund, as provided by law, and is authorized to expend monies from the fund for its administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:397 (April 1995), repromulgated LR 21:471 (May 1995).

§2105. Office of the Secretary

A. The secretary shall perform all duties and functions authorized or imposed upon him by the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature. The secretary shall further enter into a memorandum of understanding in which he assumes the responsibilities and delegation of authority according to the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature.

B. The office of the secretary is authorized to expend a sum, not to exceed $200,000 per annum, for the department's administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:471 (May 1995).

§2107. Office of Conservation—Assistant Secretary

A. The assistant secretary shall perform all duties and functions authorized or imposed upon him by the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature. The assistant secretary shall further enter into a memorandum of understanding in which he assumes the responsibilities and delegation of authority according to the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature.

B. After review of existing rules of the office of conservation, the assistant secretary, shall promulgate any additional rules necessary for implementation of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:471 (May 1995).

Chapter 23. Oilfield Site Restoration Fund

§2301. Establishment of the Fund

A. The commission, upon approval of the secretary, may enter into one or more agreements with a private legal entity to receive and administer the "Oilfield Site Restoration Fund," which shall be an interest bearing trust fund.

B. The fund shall be and remain the property of the commission.

C. The monies in the fund shall be used solely for the purposes of this Part.

D. The secretary shall:

1. certify to the Secretary of the Department of Revenue and Taxation, the date on which the fund equals or exceeds the sum of $10 million (hereinafter referred to as the cap); and

2. the fees as provided for in R.S. 30:87 shall not be collected after the first day of the second month following certification that the cap has been reached; and

3. the Secretary of the Department of Revenue and Taxation shall resume collection of the fees upon certification by the secretary that, based on expenditures or the commitment to expend monies, the fund has fallen below $6 million;

4. site-specific trust account funds within the fund shall not be counted to determine the cap.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:471 (May 1995).

§2303. Assessment of Fees

A. Effective September 1, 1993, in order to establish the oilfield site restoration fund, the following fees shall be paid:

1. $0.01 on each barrel of oil and condensate from producing wells. Production shall be determined based on severance tax collections on each well;

2. $0.005 on each barrel of oil and condensate from incapable wells. Production shall be determined based on severance tax collections on each well;

3. $0.0025 on each barrel of oil and condensate from stripper wells. Production shall be determined based on severance tax collections on each well;

4. $0.002 per thousand cubic feet on gas. Production shall be determined based on severance tax collections on each well.

B. Effective July 1, 1995 the fee shall be increased by 5 percent annually, in each of the above categories, until such time as the fee has been increased by 100 percent per site after which no further increases shall occur.

C. The royalty and overriding royalty owners shall not bear the burden of the fees imposed hereinabove.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:472 (May 1995).

§2305. Site-Specific Trust Accounts; Accounting Method

A. Prior to the establishment of the first site-specific trust account on any oilfield site, where there are one or more wells associated with a transfer of ownership interest, any party to the transfer may file an application with the secretary, on a form provided by the department, requesting approval of a site-specific trust account based on a site assessment estimate, for restoration of the site so transferred, in compliance with oilfield site restoration under LAC 43:XIX.101 et seq.

B. After a site-specific trust account has been established on any oilfield site, including one or more wells, any subsequent transfer of any interest in one or more wells included in the account shall be reported to the secretary, on a form provided by the department. The secretary shall review the reported transfer and determine whether any modifications or adjustments to the account shall be made. Once a site-specific trust account has been approved the secretary shall issue a letter of determination to the transferror indicating that he shall be exempt from liability in accordance with this Part.

C. Upon application to the department, on a form provided by the department, by the seller and the purchaser of an oilfield site transferred prior to August 15, 1993, subject to agreement by the assistant secretary for the office of conservation, a site-specific trust account may be established, or, a prior established private trust account may be transferred to the oilfield site restoration fund. Any trust account being transferred shall be subject to review and may be modified to meet the requirements of these rules.

D. Once a site-specific trust account has been established the secretary may modify the funding requirements of the account at any time during the life of the oilfield site, upon recommendation of the commission, the assistant secretary, or upon his own determination, based upon changes in operation, site conditions, or trust account status. After approval and establishment of a site-specific trust account only the responsible party shall be liable for payment of any modifications or adjustments required by the secretary.

E. When a transfer of an ownership interest (where there is an existing trust account), is reported to the secretary, as required by this Part, the secretary may, after review, determine, based on the nonsubstantial nature of the interest being transferred or the adequacy of the trust account, that no adjustment or modification to the existing trust agreement is necessary. If this occurs the secretary shall issue a letter of determination to the transferror indicating that he shall be exempt from liability in accordance with this Part.

F. The party or parties to a transfer who propose to establish a site-specific trust account shall:

1. propose a funding schedule, based on the site restoration assessment, which will fully fund the site restoration at the end of the economic life of the oilfield site;

2. pay some contribution into the trust account at the time of transfer and make quarterly payments into the trust account throughout the economic life of the oilfield site.

G. Site-specific trust account funds shall only be used to restore the specific site to which they are dedicated.

H. At the end of the economic life of an oilfield site the responsible party shall restore the site according to the standards set forth in LAC 43:XIX.101 et seq. If the responsible party has restored the site, upon approval by the assistant-secretary, the monies in the site-specific trust account shall be returned to him.

I. The commission may establish accounting procedures which will enable every transfer, whether it be one well site, a group of well sites, or a field, to be set up in one account for purposes of payment to the account. However, each well site may be accounted for in sub-accounts for purposes of tracking the individual production for its adequacy in

maintaining support of the trust. The accounting procedure may also provide for moving a sub-account to a new or existing trust account in the event of a partial transfer of properties subsequent to an initial trust being established thereby segregating the transferred properties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:472 (May 1995).

§2307. Use of the Fund

A. In addition to the administrative cost provided for herein, the monies in the fund may be disbursed and expended as directed by the secretary for the following purposes:

1. any oilfield site assessments or restoration conducted by the department pursuant to this Part. Provided, however, that the amount of money expended for the cost of a site assessment shall not exceed 10 percent of the cost to restore the site;

2. any costs and fees associated with the recovery of site restoration costs and penalties pursuant to R.S. 30:93 and 94;

3. the costs of assessment or restoration of commercial facilities as defined in R.S. 30:73(4) not to exceed 25 percent of any sums deposited within the same calendar year in which the monies are expended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 April 1995), repromulgated LR 21:472 (May 1995).

Chapter 25. Oilfield Site Restoration

§2501. Office of the Secretary; Oilfield Site Assessments or Restoration

A. The secretary or his agents, upon proper identification and notification, may enter the land of another for purposes of oilfield site assessments or restoration.

B. The secretary may enter into contracts for the purposes of site assessments or restoration to carry out the provisions of this Part, under the following circumstances.

1. When the secretary has declared in writing an emergency, he may take informal, detailed written bids from at least three contractors without the necessity of meeting the requirements of the state public bid law. Before execution of a contract, under emergency declaration, a performance bond shall be furnished by the contractor and the contracts shall be reviewed by the commissioner of administration.

2. Where no emergency exists, all contracts shall be made pursuant to the state public bid law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21:472 (May 1995).

§2503. Oilfield Site Restoration Assessments; Site-Specific Trust Accounts

A. In the event that the parties to the transfer of an oilfield site elect to establish a site-specific trust account an oilfield site restoration assessment may be made prior to the transfer, or within one year from the date of the transfer, as required by the secretary.

B. An oilfield site restoration assessment shall be performed by a contractor chosen from the list of contractors approved by the commission or a contractor who submits his credentials to the commission for approval and is subsequently added to the list.

C. A site restoration assessment shall specifically detail site restoration needs and shall provide an estimate of the site restoration costs needed to restore the oilfield site, in accordance with the standards set forth in LAC 43:XIX.101 et seq., based on the conditions existing at the time of the transfer. The site restoration assessment shall be reported on a form provided by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21:742 (May 1995).

Chapter 27. Liability; Limitations

§2701. Non-Orphaned Oilfield Sites

A. The responsible party is liable for the site restoration of an unusable oilfield site.

B. If the responsible party fails to complete restoration of an oilfield site and the assistant secretary, after notice and hearing, has declared the site to be unusable, the secretary is authorized to disburse such funds as are necessary for site restoration from the site-specific trust account. After completion of the site restoration any remaining funds in the site-specific trust account shall be remitted to the responsible party.

C. If the site-specific trust account is depleted prior to the payment of all site restoration costs, the department shall attempt to collect the remainder of site restoration costs from the responsible party or ensure that the responsible party completes the site restoration to the satisfaction of the assistant secretary. If the responsible party is still unable to complete the site restoration, and the assistant-secretary declares the site to be orphaned, the Oilfield Site Restoration Fund shall contribute the balance of the restoration costs for the site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:742 (May 1995).

§2703. Orphaned Oilfield Sites

A. If a party has transferred an oilfield site after May 1, 1993, for which a site-specific trust account was established and the transferror has remained in compliance with this Part he shall not be liable for any site restoration for the non-orphaned or orphaned oilfield site.

B. If the assistant secretary has declared an oilfield site to be orphaned which was transferred prior to May 1, 1993, the secretary may expend monies from the fund to fully restore the site. Except for the responsible party, the secretary shall not be authorized to recover the restoration costs from parties which formerly operated or held working interest in the orphaned site unless the costs to fully restore the site exceed $200,000. Transfer of an oilfield site shall be deemed to have taken place prior to May 1, 1993, where a purchase and sale agreement has been executed prior to May 1, 1993, and closing takes place within 120 days of execution.

C. If the assistant secretary has declared an oilfield site to be orphaned which was transferred after May 1, 1993, for which no site-specific trust account was established no responsible party, prior operators, or working interest owners shall receive the exemptions provided for in this Part for the subject orphan site.

D. If the assistant secretary has declared an oilfield site to be orphaned which was transferred after May 1, 1993, for which a site specific trust account was established the site shall be restored in the following manner:

1. the secretary shall expend the site-specific trust account funds; and

2. the assistant secretary shall collect any deficiencies from the responsible party; and

3. the secretary shall expend a maximum of $200,000 from the general oilfield site restoration fund if there are remaining deficiencies; and

4. if there are still further deficiencies the secretary shall recover any remaining costs from any non-exempt prior operators and working interest owners in inverse chronological order from the date on which the oilfield site has been declared orphaned according to procedures established by the assistant secretary.

E. The state shall be exempt from the provisions of this Part.

F. The commission, the secretary, and the assistant secretary, and their agents, shall not be liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:472 (May 1995).

Chapter 29. Hearings; Appeals

§2901. Aggrieved Parties; Right to Hearing

A. The secretary shall not unreasonably withhold approval of a site-specific trust account. Any party who applies for a site-specific trust account and who is aggrieved by the decision of the secretary may request a hearing and finally judicial review in accordance with the hearings and appeal process established in Part I Chapter 1 of Title 43 of the Louisiana Administrative Code in the general rules and regulations in the Office of the Secretary.

B. Any party who is aggrieved by a decision under this Part by the commission, the secretary, or the assistant secretary, shall be entitled to a hearing and appeal process as set forth above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:472 (May 1995).

Chapter 31. Penalties

§3101. Violations of this Part

A. Any violations of this Part shall be subject to the penalties as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:472 (May 1995).

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 3. Oyster Lease Damage Evaluation Board Proceedings

Chapter 37. General

§3701. Purpose

A. These rules are adopted pursuant to R.S. 56:700.10 et seq. to provide for the filing and processing, and the fair and expeditious settlement, of claims pursuant to Part XV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950. These rules are designed to insure that the claims procedure is as simple as possible, and these rules shall be interpreted in that spirit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 25:308 (February 1999).

§3703. Definitions

A. As used in LAC 43:I.Subpart 3, unless the context requires otherwise, the terms set forth below shall have the following meanings.

Biological Survey—a survey made to determine the biological test data, which is reported on a form prescribed by the board.

Biological Test Data—surveys of oyster beds and grounds by a certified biologist to determine the quality, condition and value of oyster beds and grounds.

Board—the Oyster Lease Damage Evaluation Board.

Certified Biologist—a biologist certified by the board as qualified to make biological surveys.

Department—the Department of Natural Resources.

Final Biological Survey—the biological survey made and filed by the owner or leaseholder, as applicable, pursuant to §3903.C.

Initial Biological Survey—the biological survey made and filed by the owner or leaseholder, as applicable, pursuant to §3903.A.

Intervenor—a party having an interest in the proceedings who is granted permission by the board to take part in the proceedings to the extent reasonable and necessary to assert or protect such party's interests.

Leaseholder—an owner of an oyster lease granted by the Department of Wildlife and Fisheries.

Mineral Activity—exploration (including all seismic operations) production, transportation (of equipment or product) and any other activity associated with the production of oil and gas. Also referred to as *Oil and Gas Activity*.

Owner—an owner or operator of a mineral activity.

Part XV—Part XV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950.

Party—leaseholder, owner or intervenor.

Secretary—the Secretary of the Department of Natural Resources, or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:308 (February 1999).

Chapter 39. Damage Evaluation Process

§3901. Request for Arbitration

A. Either an owner or a leaseholder who has been requested by an owner to enter into a settlement for damage to the leasehold which may occur due to the owner's proposed oil and gas activity that is expected to intrude upon the leasehold may file with the board a preliminary request for arbitration of the leaseholder's claim for damage in accordance with Part XV and LAC 43:I.Subpart 3.

B. The preliminary request shall contain the information required by a form prescribed by the board. A copy of the preliminary request and any annexed documents shall be served on the other party by the filing party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:308 (February 1999).

§3903. Biological Surveys

A. The initial biological survey shall be based on onsite inspection and evaluation and shall be made to determine the quality and value of the beds and grounds expected to be affected by the proposed oil and gas activity.

B. If a preliminary request for arbitration is filed but the owner does not file the initial biological survey report within 60 days of service of the preliminary request for arbitration, the leaseholder may apply to the board for an order to have the initial biological survey made and filed by the owner.

C. Upon completion of the oil and gas activity proposed by the owner, the owner shall have a final biological survey made at the owner's expense and filed with the board together with a request for arbitration within 60 days of completion of the oil and gas activity, to furnish a basis for determination of the actual damage to the leasehold sustained as a result of the oil and gas activity.

D. If the leaseholder believes that the oil and gas activity proposed by the owner has been completed, and that the final biological survey has not been timely made and filed by the owner, the leaseholder may call for a hearing to determine whether the owner has complied with §3903.C hereof. If upon hearing the board finds that the owner has not so complied, the board shall permit the leaseholder to have a final biological survey made and filed together with a request for arbitration, and the reasonable cost of this survey shall be assessed against the owner as part of the actual damage sustained by the leasehold.

E. The board shall engage experts to assist the board in establishing a uniform evaluation method to be followed by certified biologists in determining the quality, condition and value of the oyster beds and grounds before the oil and gas activity takes place and in determining the estimated damage or loss to the leasehold after the activity is completed.

F. The uniform evaluation method adopted by the board shall be made available to all parties and all certified biologists for use in proceedings before the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:308 (February 1999).

§3905. Certification and Selection of Biologists

A. Biologists having a minimum educational attainment of a degree in a biological science, or having been accepted by a federal or state court in Louisiana as an expert witness in the field of oyster biology or oyster ecology may apply to the board for certification. The application for certification shall be accompanied by a résumé of educational attainments and work experience, certified copies of transcripts, and any other information considered useful to the board in assessing the qualifications of the applicant as to competency in making biological surveys required by Part XV and LAC 43:I.Subpart 3. The board shall consider the application for certification and information submitted in support thereof and may in the exercise of the board's discretion certify the applicant as a biologist qualified to make biological surveys required by LAC 43:I.Subpart 3.

B. The board shall annually review and maintain a list of certified biologists from which a selection must be made of a biologist to make any biological survey provided for by Part XV or LAC 43:I.Subpart 3.

C. The board may decertify the certified biologist, after a hearing, upon a finding of unsatisfactory performance.

D. When an owner is required to have a biological survey made under Part XV, he must choose one of a group of three certified biologists submitted by the board to the owner.

E. The selection of the group of three certified biologists to be submitted to the owner as provided above shall be made by the board from the list of all certified biologists, in the following manner.

1. The initial order of listing of the certified biologists shall be determined by drawing lots under the supervision of the board.

2. The initial group of three certified biologists shall be comprised of the top three individuals on the list.

3. The next group of three certified biologists shall be formed by striking the individual of the initial group chosen by the owner and adding the next individual listed below the initial group.

4. Succeeding groups shall be formed by proceeding down the list in like manner until there are less than three individuals left on the list, at which point a new list of all of the certified biologists shall be made and the order of listing redetermined by again drawing lots.

5. Selection of subsequent groups shall be made in the same manner as provided above for the initial list.

F. In the case of a biological survey made pursuant to §3903.D, the leaseholder may select a certified biologist in the same manner as an owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:309 (February 1999).

§3907. Estimated Damage Deposit

A. Upon filing of the initial biological survey, the board shall determine the amount of the damage estimated to be sustained by the leasehold as a result of the proposed oil and gas activity, and shall notify the parties of the board's determination.

B. Upon a showing of urgent circumstances, the board will expedite to the extent practicable its determination of estimated damage.

C. Upon payment of a deposit with the board of the amount of the damage estimate made by the board, the owner may proceed with the proposed oil and gas activity. The deposit shall be invested with the state treasury as security for payment of any damage award and for payment of interest earned on the amount of the award.

D. If the deposit is not made within 30 days after notice of the board's estimated damage determination, the board may, in its discretion, dismiss the proceeding and order the owner to reimburse the leaseholder the amount of any filing fee paid by him.

E. The owner may, at any time prior to payment of the deposit, withdraw the owner's original request to the leaseholder to enter into a settlement, and proceedings hereunder shall thereupon terminate. Withdrawal shall be effective upon notice to the board and the leaseholder, and upon reimbursement by the owner to the leaseholder of any filing fee paid by him.

F. If, after the deposit is made, the owner does not commence the proposed activity within a reasonable time, the board may, upon hearing, award the leaseholder any filing fee paid by him and the reasonable cost of any survey

that may have been separately undertaken by him, pay such award out of the deposit, and return the balance of the deposit to the owner, with interest earned on such balance, and dismiss the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:309 (February 1999).

§3909. Hearings and Determination of Actual Damage

A. Upon filing of the final biological survey together with a request for arbitration, the board shall call for a hearing to determine the actual damage sustained by the leasehold as a result of the oil and gas activity. The amount of actual damage determined by the board after hearing and review by the secretary shall be due by the owner to the board for the benefit of the leaseholder. If the damage award does not exceed the amount of the deposit made by the owner in accordance with §3907.B and D hereof, the board shall pay the amount of the award out of the deposit, together with interest earned thereon, to the leaseholder, and the balance, if any, shall be paid to the owner, together with interest earned on such balance. If the award exceeds the amount of the deposit the board shall pay the entire amount of the deposit, together with the interest earned thereon, to the leaseholder and shall order the owner to pay the leaseholder the amount of the difference between the award and the deposit together with legal interest thereon from the date of the initial deposit.

B. The determination of damage by the board and review by the secretary shall be based on the values shown in the biological surveys and shall reflect true and actual damage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:309 (February 1999).

§3911. Conduct of Hearings

A. The board shall give reasonable notice of all hearings to all parties.

B. The notice shall include:

1. a statement of the time, place, and nature of the hearing;

2. a statement of the legal authority and jurisdiction under which the hearing is to be held;

3. a reference to the particular sections of the statutes and rules involved;

4. a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. At the hearing, all parties shall have the opportunity to respond and to present evidence on all issues of facts involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. The hearing record shall include:

1. all pleadings, motions, and intermediate rulings;

2. evidence received or considered or a résumé thereof if not transcribed;

3. a statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;

4. offers of proof, objections, and rulings thereon;

5. proposed findings and exceptions; and

6. any decision, opinion, or report by the board or the secretary.

E. The board shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:310 (February 1999).

§3913. Discovery

A. Parties may obtain discovery by written interrogatories, production of documents and things, requests for admission, and permission to enter upon land or other property for inspection and other purposes, limited in scope to the following matters:

1. the oil and gas activity conducted or to be conducted by the owner;

2. the quality and value of the oyster beds and grounds expected to be affected by the proposed oil and gas activity; and

3. the actual damage sustained as a result of the oil and gas activities.

B. The board in its discretion may allow discovery as to other matters, and in exceptional circumstances may allow discovery by deposition.

C. A party may serve upon any other party written interrogatories to be answered separately and fully under oath, unless objection upon stated grounds is made to an interrogatory. Interrogatories may be served with the preliminary request for arbitration or at any time after filing of the preliminary request, and shall be answered within 30 days after service.

D. Any party may serve on any other party a request to produce and permit the party making the request to inspect and copy any designated documents including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained or inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of permissible discovery and which are in the possession, custody, or control of the party upon whom the request is served; or permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring,

surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of permissible discovery. The request may be served with the preliminary request for arbitration or at any time after filing the preliminary request. The request to inspect and copy shall describe each item or category of items to be inspected with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 15 days after service of the request stating that inspection and related activities will be permitted as requested unless the request is objected to in whole or in part, on stated grounds.

E. A party may serve upon any other party a written request for the admission, for purposes of the pending arbitration proceeding only, of the truth of any matters within the scope of permissible discovery set forth in the request, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may be served with the preliminary request for arbitration or at any time after filing the preliminary request. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection upon stated grounds addressed to the matter. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admissions; and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. Any matter admitted is conclusively established unless withdrawn or amended prior to a hearing on the merits, or thereafter if not substantially prejudicial to the requesting party.

F. Discovery Proceedings. Discovery proceedings shall be conducted under the supervision of the board and any party may apply to the board for an order or other relief as justice may require. The board may, after hearing, impose upon any party who fails unreasonably to comply with discovery rules or with an order of the board the reasonable expenses, including attorney fees, incurred by the other party or parties as a result of such failure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:310 (February 1999).

§3915. Duration of Oil and Gas Activity by the Owner

A. A proposed oil and gas activity shall be deemed completed when the last damaging event occurs during the course of the activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

§3917. Limitations for Filing of Claims

A. The leaseholder must file his preliminary request for arbitration within two months of the date of receipt from the owner of the owner's request to the leaseholder to enter into a settlement for the damage which may be sustained due to the owner's proposed oil and gas activity expected to intrude upon the leasehold.

B. The owner may file a preliminary request for arbitration at any time after the owner determines in good faith that a settlement between the owner and the leaseholder cannot be reached. However, if the owner, by implementing the proposed oil and gas activity, intrudes on the leasehold prior to payment of the required deposit in accordance with Part XV, initiation of proceedings under Part XV shall thereupon become barred, and if proceedings are pending, shall thereupon be dismissed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

§3919. Notices, Filings, and Service of Copies

A. All notices, filings and service of copies provided for herein shall be in writing and shall be effective upon physical delivery to the proper recipient or upon placing same in the U.S. mail, certified, with receipt requested, addressed to the proper recipient. Notices, filings and service of copies may also be transmitted by facsimile equipment and shall be effective upon transmittal, if followed by delivery or mailing of the original document within a reasonable time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

§3921. Fees

A. The filing fee of $500 shall be paid to the board upon filing the preliminary request for arbitration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

§3923. Judicial Review

A. Any party who is aggrieved by the final decision or order in these proceedings is entitled to judicial review thereof.

B. Proceedings for judicial review of the final decision or order shall be instituted by filing a suit for judicial review in the district court of the parish in which the oyster lease is situated within 30 days of service of the notice of the final decision or order. Copies of the petition for judicial review shall be served upon the board and all parties to these proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

Title 43
NATURAL RESOURCES
Part III. Office of Management and Finance

Chapter 1. Information Processing Section

§101. Rate Schedule for Copies of Computerized Public Records

A. In accordance with the rule adopted by the Division of Administration pertaining to the uniform fee schedule for copies of public records, the Department of Natural Resources (DNR) has adopted a rule which institutes a schedule of rates to recover its costs in providing copies of computerized public records to non-governmental, private sector bodies. This schedule includes rates for those records provided on computer magnetic tape, those provided on computer printouts, and those provided via terminals.

1. The rates are as follows.

a. Output from the DNR Information Processing Center

i. Job Set Up/Take Down. Each request received from the private sector for a copy of computerized records requires the involvement of production control technicians who must set up the job, submit the job for processing, review the output according to quality control standards, and prepare the output for transmittal to the requestor. A flat rate of $20 per job is charged.

ii. Systems Analyst and Programmer Involvement. Certain jobs require the involvement of a systems analyst and/or a computer programmer to customize existing "utility" programs to meet the requestor's requirements. Each hour worked by an analyst or programmer is charged at a rate of $50.

iii. CPU-Related Resources. The selection, extraction, processing and sorting of data consume a combination of DNR computer resources, including CPU usage, memory usage, I/O channels, disk access, and tape access. The combined usage of these resources is logged by DNR in units of Standard Unit of Processing (SUP) hour. Each SUP hour is charged at a rate of $450.

iv. Printing. All printing is done on a laser printer producing 8 1/2" x 11" pages. Each image is charged at a rate of $0.10.

v. Magnetic Tapes. Users requesting records on magnetic tape are encouraged to supply their own 2,400 foot tapes. Those not doing so are charged $25 for each tape provided by DNR.

vi. Postage—Charged on an actual cost basis.

b. Output from DNR Computer Terminals. Department of Natural Resources has several computer terminals which are available to the public to access public records. These terminals are located in the Well Files area in the Natural Resources Building in Baton Rouge and in the Conservation District Offices. Currently, no charged is imposed to use these terminals, although there is a $0.25 charge for a copy of any terminal screen which is printed on the terminal printer.

c. Output from Non-DNR Computer Terminals. DNR allows private sector individuals and organizations to dial-up the DNR computer and access public records. Each user of this service must pay a one-time set-up charge of $150, with an annual renewal charge of $100. Each hour of connect time is charged at a rate of $49.80 per hour, plus telephone charges for users outside of Baton Rouge. Transaction-based access is provided at no additional charge, while table-based query-oriented access is provided at a uniform cost based on SUP hour usage. Technical support, if required, is provided at a charge of $50 per hour. Documentation is provided at a charge of $10 per copy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:241.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Management and Finance, LR 11:704 (July 1985), amended LR 19:1031 (August 1993).

Title 43
NATURAL RESOURCES
Part V. Office of Mineral Resources

Chapter 1. Geophysical and Geological Surveys

§101. Non-Exclusive Geophysical and Geological Surveys

A. Permits for geophysical and geological surveys under Title 30, Chapter 3, Sections 211 through 216 of the Louisiana Revised Statutes of 1950 shall be obtained from the State Mineral Board (SMB) through the Office of Mineral Resources (OMR). A properly completed application for a permit for such exploration must be filed in duplicate, addressed to the Assistant Secretary of the Office of Mineral Resources, and should be received by OMR at least 15 days prior to the requested effective date of the permit. Each such completed application for a permit must be accompanied by supporting documents as described in the application, and listed as follows.

1. If the permittee is a shooting company, i.e., a company whose primary business enterprise is the physical, "on-ground" acquisition of seismic and geophysical data and the transferal of said acquired data, in either raw or processed form, exclusively to one or more cost underwriting parties or by sale or licensing agreements on the open market, it shall give the name of the client(s) for whom the seismic is being shot under the permit. If permittee is not a shooting company, it shall give the name, address, and telephone number of the shooting company which will do the physical, "on-ground" acquisition of the seismic or geophysical data under the permit. The name and relevant information of the applicant's Contact that can be reached at all times by the OMR must be included.

2. The type of work planned, such as 3-D, 2-D, reflection, refraction, geochemical, gravity meter, and/or any other recognized methods of acquiring seismic, geophysical or geological data should be indicated.

3. Information pertaining to the state lands and water bottoms, including the property under the jurisdiction of the Wildlife and Fisheries Commission/Department of Wildlife and Fisheries (WFC/DWF), within the permit area must be supplied on the application.

4. Base maps, such as a Tobin or USGS quadrangle with the proposed survey area outlined, with X, Y's indicated for each corner of the outline, using State Plane Coordinate System / North American Datum 27, Louisiana North or South (SPCS/NAD 27, La. N. or S.). Maps must be properly labeled and exhibit sections, townships, and ranges. Active state lease boundaries should be clearly depicted with state lease numbers and acreage within the survey indicated. All state lands and water bottoms should be clearly outlined, with acreage depicted as well. For assistance with state lands or water bottoms within the survey outline contact the State Land Office (SLO). Property under the jurisdiction of the WFC/DWF should also be similarly depicted. For assistance with Wildlife and Fisheries questions contact the WFC/DWF.

5. Accompanying the hard copy base map(s) must be a computer disk/diskette containing a .dxf file that when constructed contains only the boundary of the proposed survey. X, Y's on the .dxf file should match the X, Y's from the hard copy map, and there should be no additional lines, labels, text or graphics included within the boundary.

6. A seismic permit will only be issued to an applicant upon the receipt and approval of a properly completed application. The applicant is requested not to include any payment when filing the application. The seismic permit fee will be calculated by the OMR staff, and an invoice will then be issued to the applicant. Once the applicant receives the invoice from the OMR, the applicant should then return the invoice along with payment for the seismic fee. Upon receipt of payment by the OMR, the application will then be fully processed for final approval, and a seismic permit will be issued to the applicant.

B. No permit issued hereunder shall cover, nor shall any project for which the permit is secured include acreage covered by a valid state mineral lease which is in full force and effect at the time the permit is secured. However, if the permit applicant secures the appropriate consent from the state mineral lessee to conduct the type of seismic operations contemplated under the permit application over the state mineral lease acreage included within the prospective project area, the permittee shall have the right under the applied-for permit to conduct the type of seismic operations set forth in the permit application over the state mineral lease acreage without the necessity of securing an addendum thereto or an additional permit. Upon the expiration, lapse, or termination of any state mineral leases, the acreage of which falls within a project area delineated in a seismic permit issued hereunder (during the term in which the said seismic permit is in full force and effect) permittee shall have the right to conduct operations on said acreage of the terminated prior agreement subject to the following:

1. if permittee has already entered into an agreement with the prior agreement party before termination and paid for the right to conduct operations across the acreage subject to the prior agreement, permittee shall not be required to pay permittor any further fee to conduct operations on said acreage once the prior agreement has terminated, either totally or in part; but

2. if the permittee has not entered into an agreement with the prior agreement party, then permittee shall pay

permittor an additional fee stipulated as the per acre seismic fee paid for in the permit, multiplied by the number of terminated acres of the prior agreement. Permits issued are limited to a term of one year from date of issuance, unless revoked for cause. The state may lease acreage within the seismic permitted area during the one year term of the non-exclusive seismic permit, however, the lessee shall allow the prior seismic permittee to conduct seismic operations over the leased area. Seismic permits may also be issued to other parties within the survey area during the same one year term of the non-exclusive. The permit is subject to any prior seismic permit or other agreement already in existence on the acreage at the time said non-exclusive seismic permit is issued.

C. A permit to conduct seismic, geophysical and/or geological surveying of any kind upon state of Louisiana lands or water bottoms over which the SMB through the OMR has jurisdiction shall be subject to the following terms.

1. The permit shall be valid for a period of one year from date of issuance.

2. The exercise of operations under the permit shall be limited only to the project area set forth in the application.

3. Any and all rights exercised under a valid seismic permit issued hereunder shall be exclusive only to the named permittee or, if the permittee is not a shooting company, the company named in the permit application as the entity to actually do the physical, "on ground" seismic project and the permit shall include location plat, written description, and total acreage of state owned land and/or water bottoms in the project area, covered by the permit, and the date of commencement of the permitted activity.

4. No permit issued hereunder shall be transferable.

5. The permittee shall pay a fee to the OMR for the seismic permit by a check, made payable to "Office of Mineral Resources." The fee shall be as determined by the SMB in its most recent resolution on seismic permit fees. If the area is surveyed using a technique other than 2D or 3D (e.g., refraction, geochemical, gravity or magnetics, etc.) then the fee will be determined by the SMB at the time of the application.

6. The permittee shall retain ownership of the seismic data gathered and shall not be required to submit a copy of the seismic data to the OMR. However, the SMB or its employees, OMR, shall be allowed to review any and all geophysical or geological data acquired under the permit, all in a format acceptable to the OMR, at a facility designated by OMR. Permittee may, but shall not be required to, voluntarily agree to make available to OMR the fully migrated and processed data derived from the seismic project under the issued permit. Except for information included in a seismic permit, including the plat showing the outline of the area in which the seismic is to be shot, all data secured or reviewed by OMR shall be deemed confidential and not subject to the public records doctrine; but shall be for the use of the OMR staff only.

D. In order to accommodate proper administration of seismic permits issued hereunder and orderly operations conducted under said permits, the applicant shall submit to the OMR notice of the date of commencement of any seismic operations authorized by the permit, and a map acceptable to the staff of the OMR reasonably identifying the particular geophysical layout for the area in which operations are to be conducted. For purposes of this Section, date of commencement of operations is defined as the date upon which surveying crews and equipment are moved into the area to be worked for purposes of preliminary line placement surveying prior to the beginning of acquisition of data.

E. Violation by the permittee of any of the terms specified in this schedule as promulgated, or which may be written on the permit form, shall be deemed to be a permit violation by the OMR which may, at the sole discretion of the OMR, subject permittee to the cancellation of his permit and forfeiture of his permit fee.

F. Pursuant to R.S. 30:214 any and all rights exercised by any permittee pursuant to a permit issued hereunder shall be in compliance with any and all applicable rules and regulations which have been promulgated, and which may be further promulgated from time to time, by the Department of Wildlife and Fisheries governing the conduct of seismic exploration on land and/or water for the protection of oysters, fish, and wildlife. Further, all wildlife and waterfowl refuges, game and fish preserves, or oyster seed ground reservations, the mineral rights over which the Department of Wildlife and Fisheries exercises direct control, shall not be included in any project area covered by any permit issued hereunder unless written permission is secured from said agency.

G. The approval of the State Mineral Board is granted subject to the rules which may be adopted by the State Mineral Board from time to time.

AUTHORITY NOTE: Promulgated in accordance with Act 13, First Extraordinary Session, 1988, R.S. 30:136(A)(2) and 30:142(A), as amended by Acts 1017 and 1018 of 1990, R.S. 30:209 and 209.1, as amended by Acts 530 and 531 of 1997, and R.S. 30:211 through 216.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1060 (May 2000), amended LR 34:271 (February 2008).

§103. Exclusive Geophysical Agreements

A. Exclusive geophysical agreements authorized under Title 30, Chapter 3, Sections 208 through 216 of the Louisiana Revised Statutes of 1950 may be obtained from the State Mineral Board (SMB), through the Office of Mineral Resources (OMR).

B. There are three types of Exclusive Geophysical Agreements (EGA) which may be secured from the OMR, namely: EGA Type I, EGA Type II, and EGA Type III. The following shall apply to all EGA's secured hereunder.

1. A party desiring to apply for an EGA must first meet with the OMR staff to review the applicant's objectives. The purpose of this meeting with the OMR staff

is so that the applicant can present the area of interest and the type of EGA being requested to the staff for review. The staff will determine if an EGA should be granted in the area of interest and will also decide under what special conditions, if any, the EGA should be considered. The applicant should present at this meeting an acceptable base map, such as a Tobin or USGS quadrangle with the proposed survey area outlined, with the description set forth in X/Y Lambert coordinates using State Plane Coordinate System/ North American Datum 27, Louisiana North or South (SPCS/NAD 27, La. N. or S.). Active state leases boundaries should be clearly depicted with state lease numbers and acreage within the survey indicated. State lands and water bottoms should be clearly outlined, with acreage depicted as well. Property under the jurisdiction of the Wildlife and Fisheries Commission/Department of Wildlife and Fisheries (WFC/DWF) should also be depicted.

2. After the area of interest and the type of EGA has been presented to the OMR staff for review, the area will be evaluated in order to set the minimum terms. The interested party will then be provided with this information. If accepted by the party, then these minimums will be recommended to the SMB for its approval.

3. Upon SMB approval, the area to be covered by the exclusive geophysical agreement shall be nominated just as a lease. The applicant should then apply to the OMR Leasing Section to nominate the area for the designated monthly mineral lease sale. A nomination letter, including plat and legal description of the area, with an application fee of $400 must be submitted according to the date schedule set by the OMR Leasing Section.

4. The nominated acreage will then be advertised on the same delay basis and in the same manner as lease nominations; which advertisement will state a property description of the geographical area over which the EGA is to be awarded, the type of EGA sought and the minimum per acre seismic fee acceptable to the SMB as a bid, and the day, date, time, place of the next State Mineral Lease Sale at which bids will be accepted.

5. The term of the EGA shall be 18 months with an option for an additional six months, which option period shall be granted only upon written request by the bid winner made prior to the end of the original 18 month term and upon payment to the Office of Mineral Resources in the manner set forth as acceptable herein above of a sum of money equal to one-half of the original total fee bid and paid for the seismic agreement.

6. EGA agreements are awarded by public bid.

7. The EGA awarded shall be subject to, and shall not supersede, any existing seismic permits, leases, or other agreements of any kind with the state of Louisiana in the nominated area at the time awarded, of which all parties are hereby deemed to have notice.

8. The staff of the OMR will be provided access to any and all geophysical or geological data including, but not limited to, 2-D, 3D seismic, gravity (air or surface), and magnetic (air or surface) acquired under the EGA, in a format acceptable to the OMR at the facilities of the entity conducting the seismic operations under the EGA or at facilities designated by the OMR, during all phases of the seismic operations.

9. The EGA shall be available for the purpose of conducting geophysical or geological surveys of any kind for the term and area specified in the permit. In the case of 3D seismic, all EGA's require full fold 3D coverage over the entirety of the nominated state acreage to the fullest extent possible.

10. It shall be the responsibility of the grantee to keep OMR informed, in a timely manner, of all phases of ongoing operations, including the commencement and completion of data acquisition, processing, reprocessing, and other schedules of activity affecting the final processed seismic data.

11. Should any said prior agreement terminate as to all depths, either fully or partially, before the end of the primary term, or the option term, grantee shall have the right to conduct 3D geophysical operations on said acreage of the terminated prior agreement subject to the following:

a. if grantee has already entered into an agreement with the prior agreement party before termination and paid for the right to conduct geophysical surveying across the acreage subject to the prior agreement, grantee shall not be required to pay grantor any further fee to conduct geophysical surveying on said acreage once prior agreement has terminated, either totally or in part; but

b. if grantee has not entered into an agreement with the prior agreement party, then grantee shall pay grantor an additional fee stipulated as the per acre seismic fee at the rate bid for in the EGA.

C. In addition to §103.B above, the following shall apply to the Exclusive Geophysical Agreement (EGA) Type I:

1. The SMB shall not grant any new seismic agreements or permits in the nominated area during the primary term of the EGA, or the option term if activated, but does reserve the right to accept nominations for and grant new mineral leases within the nominated area of the exclusive geophysical agreement. Any new mineral leases granted within the nominated area of the EGA during its primary term, or option term if activated, shall be subject to the rights granted under the EGA and the grantee shall not be required to deal with the state mineral lessee in order to conduct seismic operations over the new lease acreage.

D. In addition to §103.B above, the following shall apply to the Exclusive Geophysical Agreement (EGA) Type II.

1. The SMB shall not grant any new seismic agreements or permits, or any new leases in the EGA area from the time it is nominated, during the primary term of the EGA, or the option term if activated. However, a buffer zone of 1/2 mile will be established around existing leases or operating agreements within the area of the EGA. Only the grantee of the EGA and lessee of any existing lease or

operating agreement shall have the right, concurrent with, but separate from the right of the other, to nominate acreage for a state mineral lease within that buffer zone during the primary term of the EGA, or the option term if activated. The leases may then go up for public bid at the regular monthly state mineral lease sale.

2. The EGA grantee only shall have the right to nominate acreage within the EGA area for a state mineral lease during the primary term of the EGA, or the option term if activated, except as to the buffer zone around existing leases, which lease nominations shall not exceed 1,500 acres each and shall not in aggregate amount exceed one-third of the entire acreage of the EGA, unless agreed to by the SMB.

E. In addition to §103.B. above, the following shall apply to the Exclusive Geophysical Agreement (EGA) Type III.

1. The state will not grant any new seismic permits or agreements on, or lease the nominated acreage, or any part thereof, during the primary term of the EGA, or the option term if activated, except that a buffer zone of 1/2 mile will be established around existing leases or operating agreements within the nominated area of the EGA. Only the grantee of the EGA and lessee of the existing lease or operating agreement shall have the right, concurrent with, but separate from the right of the other, to nominate acreage for a state mineral lease within that buffer zone during the primary term of the EGA, or the option term if activated. The leases may then go up for public bid at the regular monthly state mineral lease sale.

2. The EGA III grantee shall have the exclusive right, within the primary term of the EGA, or the option term if activated, to select for mineral leases tracts within the EGA area, not to exceed 1500 acres each or one third in the aggregate of the entire state acreage within the nominated EGA area unless agreed to by the SMB.

3. The grantee of an EGA III shall have the exclusive right to enter into lease agreement with the state on each tract for the consideration originally bid and under the terms of the Louisiana State Lease Form, Revised 1981, as amended. Each selection made, thereby creating a state lease, will incur, in addition to the per acre bonus and royalty as advertised and bid during the acquisition of the EGA, a 10 percent administrative fee. Also, a $15 per acre fee shall be collected from the mineral lessees and deposited into the Louisiana Wildlife and Fisheries Conservation Fund, as well as, an additional $5 per acre fee shall be collected from the mineral lessees and deposited into the Oil and Gas Regulatory Fund.

F. The State Mineral Board, through the Office of Mineral Resources, agrees, except for the information included in a seismic permit to hold all information, maps, data of any and all kinds provided to the state under R.S. 30:213 or as a result of the terms of the exclusive geophysical agreements confidential and same shall not be available for view or use except by certain members of the staff of the Office of Mineral Resources in connection with the administration of state owned lands and water bottoms, and the state mineral leases thereon unless ordered by a court of proper jurisdiction to do so, or with the granted written permission of, and under the strict limitations imposed by, the owner having authority to license said data. Said information shall be kept under lock and key, except during the course of actual examination by the staff of the Office of Mineral Resources. Any violation of these requirements is hereby declared cause for peremptory removal from office or discharge from employment in addition to the penalties provided under R.S. 30:213.

AUTHORITY NOTE: Promulgated in accordance with Act 13, First Extraordinary Session, 1988, R.S. 30:136(A)(2) and 30:142(A), as amended by Acts 1017 and 1018 of 1990, R.S. 30:209 and 209.1, as amended by Acts 530 and 531 of 1997, and R.S. 30:211 through 216.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1061 (May 2000), amended LR 34:273 (February 2008).

Chapter 2. Operating Agreements upon Relating to State-Owned Lands and Water Bottoms

§201. Operating Agreements

A. Operating agreements under Title 30, Chapter 3, Sections 208 through 209.1 of the Louisiana Revised Statutes of 1950 may be obtained from the State Mineral Board through the Office of Mineral Resources.

B. An operating agreement, as that term is used herein, shall refer to the contractual agreement by and between the state of Louisiana and an operator, under limited conditions and circumstances, and in lieu of a state mineral lease, to reestablish or attempt to establish production of liquid or gaseous hydrocarbons from an existing well, or wells, located on state owned lands or water bottoms previously leased, but on which the lease has terminated, by reworking, deepening, sidetracking, or plugging back of said well(s) when it has been determined by the State Mineral Board that, due to equity, economics, and other factors, it is in the best interest of the state to assume a portion of the risk of establishing production in said existing wells by contracting with the operator to attempt said establishing of production on behalf of the state whereby the state shall be entitled to receive a graduated share of production, or its value, based on recoupment of the risked cost as monitored by the Office of Mineral Resources in administering the operating agreement.

C. Operating agreements shall only be granted by the State Mineral Board in those limited situations set forth and illustrated by R.S. 30:209 (4)(a)(i-iv) when it has been determined that the best interest of the state of Louisiana will not be served by the granting of a regular state mineral lease.

D. Pursuant to R.S. 30:124 all permits will be issued subject to strict compliance by the permittee with all applicable rules governing the conduct of seismic exploration in water areas as such rules may from time to time be promulgated by the Department of Wildlife and

Fisheries for the protection of oysters, fish, and wildlife. Further all wildlife and waterfowl refuges, game and fish preserves, or oyster see ground reservations or any part thereof, shall not be deemed to be included in the area covered by any permit unless written permission from the agency in charge of such refuge, preserve, or reservation is also secured.

AUTHORITY NOTE: Promulgated in accordance with Act 13, First Extraordinary Session, 1988, R.S. 30:136(A)(2) and 30:142(A), as amended by Acts 1017 and 1018 of 1990, R.S. 30:209 and 209.1, as amended by Acts 530 and 531 of 1997, and R.S. 30:211 through 216.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1062 (May 2000).

Chapter 3. Fees and Other Charges

§301. Fees and Other Charges

A. The Department of Natural Resources, Office of Mineral Resources, pursuant to the authority of Act 106 of the 2002 First Extraordinary Session of the Louisiana Legislature authorizing and setting fees and charges, has adopted the following fees and charges commensurate with costs incurred in the application for and administration of state oil, gas and mineral leases and operating agreements on state-owned lands and water bottoms. These fees and charges shall be periodically reviewed under applicable statutory authority and may be increased, subject to caps and guidelines within that authority, to maintain fiscal parity with economic conditions on an ongoing basis. The fees currently being charged and the amount thereof are as follows.

1. Pursuant to R.S. 30:124, a fee from the successful bidder for obtaining a new mineral lease equal to 10 percent of the total cash bonus amount bid, in additions to the cash bonus paid, and paid by the successful bidder for the lease to cover the cost of the bid awarding process. A check or money order for this fee shall be contained in the sealed bid packet accompanying the cash bonus and bid form.

2. Pursuant to R.S. 30:125, a non-refundable fee, presently in the amount of $400, submitted as a check or money order by the party nominating state owned lands and water bottoms accompanying said nominating application to cover the cost of processing and advertising the nomination.

3. Pursuant to R.S. 30:126(A), a fee, presently in the amount of $20, to cover costs of providing on request a certified proof of publication showing that nominated tracts have been properly advertised.

4. Pursuant to R.S. 30:126(B), fees in the present amount shown below for hard copies of items listed below:

a. yearly subscription for notice of publication—$120 per year;

b. copies of tract maps north of the thirty-first parallel—$10 per month;

c. copies of tract maps south of the thirty-first parallel—$20 per month;

d. certified proofs of no conflict or overlap—$5 each;

e. certified proofs of tracts within 3 mile limit of Louisiana coastline—$5 each.

5. If any item is requested in electronic form the fee shall be a yearly subscription payment presently in the amount of $200.

6. Pursuant to R.S. 30:127(C), fee, presently in the amount of $5 each, to cover the cost of furnishing certified proof of the existence of a particular lease.

7. Pursuant to R.S. 30:128(A), fee, presently in the amount of $100 each, to cover the cost of preparing and docketing transfers or assignments of leases or other mineral rights.

8. Pursuant to R.S. 30:129(A), following fees, presently in the amounts listed below, for particular administration of leases:

a. fee of $500 to cover the cost of advertising and docketing of each instrument related to the administration of leases having to do with pooling and unitization;

b. fee of $50 per hour for each hour or portion thereof spent by staff to verify claims, disputes, or questions pertaining to the terms, conditions, obligations and duties expressed or implied in the state mineral leases.

9. Pursuant to R.S. 30:130, fee, presently in the amount of $1 per copy, to cover the cost of certification of records.

10. Pursuant to R.S. 30:143(C), fee, presently in the amount of $100, collected together with a bond for applications to transfer interest in a solid mineral lease to cover investigation by the state of the transfer.

11. Pursuant to R.S. 30:148.3, fee deducted from $50 advance payment for application to secure a lease to erect transportation and/or storage facilities (including underground storage facilities) to cover cost of advertising for the said lease.

12. Pursuant to R.S. 30:126(B)(2)(g), a fee, presently in the amount of $1 per page, to transmit by facsimile mail or in any other electronic form any documents when requested to do so to cover the cost of such facsimile transmittal.

13. Pursuant to R.S. 30:126(B)(2)(g), a fee presently in the amount of $0.25 per page, to physically copy or print any document which it oversees upon request to cover the actual cost of copying same, as well as a fee, presently in the amount of $5, to copy any map or plat in a form no larger than 11 1/2' x 17' at customer request.

14. Pursuant to R.S. 30:215(A), fee for obtaining a non-exclusive geophysical permit on state owned lands and water bottoms as authorized between a maximum of $30 per acre and a minimum of $5 per acre, and set by the most recent resolution of the State Mineral Board of record and on file in the Office of Mineral Resources, multiplied times the number of state owned land and/or water bottom acres

located within the geographic boundary of the permitted area.

15. Pursuant to R.S. 30:216, fee for exclusive geophysical agreements over state owned lands and water bottoms comprised of the per acre bid price, over the minimum per acre acceptable price set by the State Mineral Board, made by the successful bidder for the geophysical agreement multiplied times the number of state owned acres.

B. Other charges in the form of liquidated damages or penalties assessed pursuant to contractual or applicable statutory authority.

1. Pursuant to R.S. 30:125(B), liquidated damage penalty of $100 per day levied against each current record lease holder of state mineral lease who does not maintain as current his authorization to do business in the state of Louisiana as evidenced by receipt in the Office of Mineral Resources of a copy of the renewed authorization to do business in the state of Louisiana. This liquidated damage penalty shall accrue until receipt by the Office of Mineral Resources of the appropriate copy of the said certificate of renewal of authorization. The State Mineral Board may waive all or any portion of this liquidated damage penalty.

2. Pursuant to contractual agreement in the state mineral lease form document, liquidated damage assessed jointly and severally against state lessees of a terminated state mineral lease in the amount of $100 per day beginning on the ninety-first day following lease termination for failure to execute and record an appropriate release of the state mineral lease. This liquidated damage shall continue to accrue until the appropriately executed release is recorded in the proper parish(s) in which the terminated lease is located. The State Mineral Board may waive all or any portion of this liquidated damage.

3. Pursuant to R.S. 30:128(B)(1), penalty of $100 per day, up to a maximum of $1,000, accruing on a daily basis from the sixty-first day following execution of the transfer or assignment of an interest in a state mineral lease for failure to obtain State Mineral Board approval within 60 days of execution.

4. Pursuant to R.S. 30:136(A)(1)(c), liquidated damage penalty of $1,000 assessed against new payor for failure to notify the Office of Mineral Resources of payor change to new payor for a lease unit well code (LUW) and provide necessary information on new payor prior to date new payor makes payment due.

5. Pursuant to R.S. 30:136(B)(1), liquidated damage penalty of 5 percent of total sum due or paid, not to exceed $500, for incorrectly completing any part of any form required by the Department of Natural Resources or the Office of Mineral Resources to be filed in conjunction with payments of any sum, other than bonuses, rentals or shut-in payments, owing to the state from the day after due date of payment made, unless corrected prior to due date. The State Mineral Board may waive all or any portion of this liquidated damage penalty.

6. Pursuant to R.S. 30:136(B)(1), liquidated damage specified as such in any contract entered into by the state of Louisiana, through the State Mineral Board, including, but not limited to, mineral leases, operating agreements, etc., the purpose of which is to facilitate the exploration, drilling, development and production of minerals from state owned lands and water bottoms which shall, as between the contracting parties, specify the agreed upon amount of damage, including cost of recovery, which would be incurred by the state as a result of a violation of the terms of the contractual agreement.

7. Pursuant to R.S. 30:136(B)(2), liquidated damage penalty of 10 percent of total of any sum due, not to exceed $1,000, for underpayment of that said sum due, other than bonus, rentals or shut-in payments, collectable on the day after the sum was due. The State Mineral Board may waive all or any portion of this liquidated damage penalty.

8. Pursuant to R.S. 30:136(B)(3), penalty of additional 2 percent of total sum due if incorrectly completed form which necessarily accompanies a payment due, is not corrected within 60 days following payment due date, or sum due—other than cash bonus, rental or shut-in payment—is either not paid or underpaid by due date; penalty begins accruing on sixty-first day following failure to correct an incorrectly completed form or day following due date on failed payment or under payment of sum due and accrues on each 30 day period thereafter, or fraction thereof, up to a maximum of 24 percent. Penalty shall be levied on principal and accrued interest each 30 day period. The State Mineral Board may waive all or any portion of this penalty.

9. Pursuant to R.S. 30:209(2), monetary revenues derived from the sale of production, less reasonable costs of drilling, equipping and operating wells, from or allocated to state owned lands and water bottoms which are not under a state mineral lease.

10. Pursuant to R.S. 30:209(4)(b), monetary revenues equal to 25 percent of the value of production payments derived from operating agreements entered into by the state of Louisiana after August 15, 1997.

AUTHORITY NOTE: Promulgated in accordance with Act No. 106 of the first Extraordinary Session of the 2002 Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1063 (May 2000), amended LR 34:275 (February 2008).

Chapter 4. Dry Hole Credit Program

§401. Definitions

A. Unless the context requires otherwise, the terms set forth hereinafter shall have the following respective meanings, to-wit:

Coastal Zone—that portion of the land and water bottoms of the state of Louisiana, including the Gulf of Mexico, set forth and defined as the coastal zone in R.S. 49:214.24.

Dry Hole—a completed well which is not productive of oil or gas in any sand and classified as a Status 29 well by the Office of Conservation.

Dry Hole Credit—the lesser of the value of 5 billion cubic feet of natural gas production (or the natural gas equivalent of condensate production) multiplied by the spot market price per cubic foot of natural gas at the Henry Hub (or any other gas gathering and marketing facility recognized by OMR from which spot market sales of gas occur, if Henry Hub is not available for comparison pricing), valued at the time application is made for certification as a royalty relief receiving well, or 50 percent of the dry hole well cost of the dry hole credit well which serves as the basis for the dry hole credit sought. The value of dry hole credit may be further modified if the dry hole credit well was drilled as a unit well in a unit which did not contain the entirety of the state mineral lease on which it was drilled or contains lands and leases in addition to that on which the dry hole credit well was drilled.

Dry Hole Credit Well—any new well drilled for purposes of developing and producing oil or gas mineral resources which:

a. is spudded after July, 1, 2005, but completed before June 30, 2009 for the purpose of certification; and

b. is drilled on a state mineral lease located within the coastal zone of Louisiana; and

c. is drilled to a depth greater than 19,999 feet SSTVD; and

d. is logged by suitable geophysical methods; and

e. is verified by OMR as a dry hole by being classified as a Status 29 well by the Office of Conservation; and

f. is not "commercially productive" by being completely plugged and abandoned according to rules promulgated by the Office of Conservation as evidenced by a copy of the well abandonment certificate duly signed by the appropriate authority in the Office of Conservation; and

g. has had copies of any and all well information derived from drilling same, including geophysical and geological, surrendered to OMR to be held as a public record; and

h. has been certified by the Office of Mineral Resources as a dry hole credit well.

Dry Hole Well Cost—a detailed, itemized list of actual costs (not AFE or estimated costs) of drilling the dry hole credit well from well site preparation (including such things as preparing board road, anchoring pads, dredging, permitting and similar preparatory work, but not including legal fees, lease related costs, hearing costs, title searches and similar types of cost), equipment and materials actually utilized in drilling the dry hole credit well, to plugging and abandoning the well according to rules promulgated by the Office of Conservation. All actual costs claimed shall conform generally to costs recognized and accepted as costs attributable to drilling a well only by the Council of Petroleum Accountants Societies (COPAS).

OMR—the Office of Mineral Resources, an office of the Department of Natural Resources and the statutorily designated staff of the Louisiana State Mineral Board.

Pre-Qualifying Well—any permitted, but undrilled, well for which pre-qualifying certification is sought and which meets the following criteria, to-wit:

a. application is made by completely and accurately filling out the pre-qualifying form provided by OMR; and

b. the proposed well is permitted to be drilled on a state mineral lease located in the coastal zone of Louisiana; and

c. the proposed well is permitted to spud subsequent to certification by OMR of the dry hole credit well which applicant seeks to use as the basis for the dry hole credit offset; and

d. applicant is the proper party granted authority to utilize the dry hole credit derived from the dry hole credit well, or his successor or assignee; and

e. the proposed well has been permitted by the Office of Conservation to be drilled to a depth reasonably calculated to produce hydrocarbons from sands below 19,999 feet SSTVD; and

f. the proposed well is permitted to spud after July 1, 2005 and completed before June 30, 2009; and

g. applicant has obtained from the Office of Coastal Restoration and Management a letter setting forth the minimum mitigation to be required from the applicant if the well is drilled and completed as a hydrocarbon producer, which mitigation shall amount to not less than 125 percent of the wetlands impact of the pre-qualifying well if it becomes a royalty relief receiving well together with applicants agreement to fulfill said mitigation obligation; and

h. is certified as a pre-qualifying well by OMR.

Royalty Relief Receiving Well—any new well drilled for purposes of developing and producing oil or gas mineral resources which:

a. is spudded after July 1, 2005, but completed before June 30, 2009 for the purpose of certification; and

b. is drilled after certification of the dry hole credit well sought to be utilized for the dry hole credit; and

c. is drilled by the person or entity which has earned the dry hole credit for the dry hole credit well sought to be utilized, or his successor or assignee; and

d. is drilled on a state mineral lease located within the coastal zone of Louisiana; and

e. is drilled and completed as an oil or gas well, as so designated by the Office of Conservation, capable of producing from hydrocarbon bearing sands below 19,999 feet SSTVD; and

f. has been previously certified as a pre-qualifying well by OMR; and

g. does not utilize or attempt to utilize any other state tax credit (other than an income tax credit) or royalty

modification of any kind to modify royalty paid to the state on production therefrom; and

h. has, from being qualified as a pre-qualifying well, a letter from the Office of Coastal Restoration and Management setting forth the mitigation required from the applicant, which shall amount to not less than 125 percent of the wetlands impact of the royalty relief receiving well, together with the agreement by the applicant to perform said mitigation; and

i. has been certified as a royalty relief receiving well by OMR.

SMB—the Louisiana State Mineral Board created by Act 93 of the 1936 Regular Session of the Louisiana Legislature.

True Vertical Depth—the actual vertical depth sub sea (below mean sea level) and referred to as SSTVD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1608 (September 2006).

§403. Application for Status as a Dry Hole Credit Well

A. Only one person or entity shall be able to earn a dry hole credit for each dry hole credit well. The person or entity drilling a dry hole, having the right to apply (whether as the sole working interest party or by agreement between all working interest parties) and desiring to qualify said dry hole as a dry hole credit well, shall apply for status as a dry hole credit well by completely and accurately filling out the provided form and sending same to OMR at 617 North Third Street, LaSalle Building, Eighth Floor, P.O. Box 2827, Baton Rouge, LA 70821-2827, accompanied by the following, to-wit:

1. the 1 inch and 5 inch electrical survey; and

2. any side wall cores, logs or well surveys run on the well; and

3. a copy of that part of the daily drilling report showing the spud date and location and the last part showing drilling cessation, including pulling the drill stem out with the date thereof; and

4. a well survey verifying SSTVD and any deviation from vertical taken by the drill pipe; and

5. a copy of the well history report filed with the commissioner of conservation; and

6. a copy of the well abandonment certificate signed by the appropriate authority from the Office of Conservation showing that the well has been plugged and abandoned in conformity with the rules and regulations promulgated by the Office of Conservation; and

7. copies of any other data or information derived from the drilling of the dry hole which may reflect upon its status; and

8. a statement of dry hole cost (which shall be subject to audit by, and at the sole discretion of, the staff of OMR); and

9. written proof (which may include the AFE of the dry hole well showing the applicant to be the sole working interest party or, if more than one working interest owner, a written, notarized agreement, signed by all working interest owners as shown on the AFE, stating that applicant is the authorized party to receive the dry hole credit) that the applicant is the proper person to earn the dry hole credit if the well is certified as a dry hole credit well.

B.1. If the state mineral lease on which the certified dry hole credit well is drilled is part of a unit, either a voluntary unit or a commissioner's unit, which either:

a. contains only a portion of the said state mineral lease; or

b. if the unit contains the entirety of the lease on which dry hole credit well is drilled, but additional leases as well;

2. then the value of the dry hole credit allowed using that said dry hole credit well as its basis, whether the value of the dry hole credit is computed by utilizing the dry hole cost of that said dry hole credit well or by computing the value of 5 billion cubic feet of natural gas (or its equivalent in condensate), shall be reduced by multiplying the total dry hole credit by a fraction comprised of the proportion of the acreage of the state mineral lease on which the dry hole credit well is drilled, allocated in the unit to the total acreage of the unit.

C. All applicants must be duly registered with OMR pursuant to the requirements of Act 449 of the 2005 Regular Session of the Louisiana Legislature.

D. All data given to OMR on all dry hole credit wells certified pursuant to this rule shall be kept in a database at OMR and deemed a public record.

E. After all data submitted has been reviewed by the staff of OMR and the dry hole proposed by the applicant is determined to meet the criteria for a dry hole credit well, OMR shall issue a letter under the signature of the assistant secretary of OMR to the applicant certifying that the submitted dry hole has been deemed a dry hole credit well, and further, containing the serial number of the dry hole credit well, the applicant's name as the party or entity to whom the dry hole credit will be issued, that portion of the accepted total dry hole cost of the dry hole credit well which may be applied against royalty from a royalty relief receiving well (or fraction thereof if the dry hole credit well was a unit well containing leases other than that on which the dry hole credit well was located) and the spud, and plugging and abandonment dates of the dry hole credit well.

F. A report shall be made by OMR to the SMB at its next called meeting following the issuance of the dry hole credit letter giving such information as shall be required by the SMB at the time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1609 (September 2006).

§405. Assignment of a Dry Hole Credit

A. The party named on the certification from OMR of a dry hole credit well as the party to whom the dry hole credit is issued may assign the entirety of the dry hole credit to another party or entity, but the dry hole credit shall not be divided in any assignment, either by assigning fractional interests or by assigning the entirety of the interest to more than one assignee.

B. Any assignment of a dry hole credit shall be in the form of an instrument signed by both assignor and assignee, duly witnessed and properly notarized, containing, in addition to language of transference of the dry hole credit, the complete legal names of the assignor and assignee, their respective business domiciliary addresses and correct, up-to-date telephone numbers, facsimile number and email address (if any), the serial number of the dry hole credit well which forms the basis of the dry hole credit together with the value of the dry hole credit being transferred, as both are set forth on the certification of dry hole credit well status belonging to the assignor. The original certification of dry hole credit well status shall be attached to and be a part of the assignment.

C. No assignment or transfer of a dry hole credit shall be valid unless approved by the SMB. The assignment or transfer of the dry hole credit shall utilize the same procedure as required for the assignment or transfer relating to minerals or mineral rights required under R.S. 30:128(A).

D. An assignee of a dry hole credit must be registered with OMR as a prospective lease holder in full compliance with Act 449 of the 2005 Regular Session of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006).

§407. Application for Status as a Pre-Qualifying Well

A. A party desiring to apply a dry hole credit from a certified dry hole credit well to a proposed new well shall, prior to drilling the new well, complete in full an application form provided by, to be returned to, OMR at 617 North Third Street, LaSalle Building, Eighth Floor, P.O. Box 2827, Baton Rouge, LA 70821-2827, requesting that the proposed new well be certified as a pre-qualifying well. Together with, and accompanying, the completed application form, the applicant shall provide the OMR staff with the following, to-wit:

1. a drilling permit from the Office of Conservation which indicates that the proposed pre-qualifying well will be spudded after July 1, 2005, and prior to June 30, 2009, and drilled to a depth reasonably calculated to secure hydrocarbon production below 19,999 feet SSTVD; and

2. written proof that the proposed pre-qualifying well is going to be drilled (bottom-holed) on a state mineral lease located in the coastal zone of Louisiana, either as a lease well or a unit well (for which only a portion of the total dry hole credit amount shall apply, as obtained by multiplying the dry hole calculated by a fraction which is equal to the proportion of the state mineral lease acreage on which the proposed pre-qualifying well is drilled as allocated within the unit to the total acreage of the unit); and

3. written proof in the form of an affidavit that all necessary permits and all rights-of-way have been acquired, that there are no impediments, including management approval, remaining to the drilling of the well and that the Office of Coastal Restoration and Management has been notified of the intended well in order to review the potential wetlands impact; and

4. the written certification of dry hole credit well status issued by OMR or an assignment of dry hole credit interest previously approved by the SMB showing that the applicant is the proper party to apply for pre-qualification status; and

5. written evidence from the Office of Coastal Restoration and Management, which shall have been notified of the application for pre-qualifying well status by OMR, obtained by the applicant, setting forth the estimated wetlands impact of the proposed new well together with an agreement by the applicant to mitigate not less than 125 percent of the wetlands impact, or more if required, in a manner approved by the Office of Coastal Restoration and Management.

B. No more than 20 active pre-qualifying wells and existing royalty relief receiving wells, in the aggregate, shall be certified by OMR at any one time. If a party or entity having a dry hole credit from a certified dry hole credit well proposes to drill a new well and applies for status of the new well as a pre-qualifying well, and there are already 20 active pre-qualifying wells and/or royalty relief receiving wells, in the aggregate, then that applicant shall be placed on a waiting list, in the order of date and time of application. Thereafter, if any active pre-qualifying wells become inactive, new applicants on the waiting list, in the order of their listing, may apply for status of a new well to be drilled as a pre-qualifying well provided that no pre-qualifying well status may be granted on or after June 30, 2009.

C. Upon applicant's furnishing the information hereinabove set forth, and if there are less than 20 active pre-qualifying wells and/or existing royalty relief receiving wells, in the aggregate, already certified, OMR may issue a letter certifying that:

1. as of the effective date set forth in the letter, the new proposed well, as designated by the serial number issued by the Office of Conservation on the drilling permit, is deemed an active pre-qualifying well; and

2. the pre-qualifying well status shall remain active only until:

a. the proposed new well is drilled, logged and deemed productive from hydrocarbon bearing sands located below 19,999 feet SSTVD or classified as a Status 29 dry hole by the Office of Conservation, or down hole drilling operations cease for a period in excess of six months without a log being run which indicates the well will be productive from hydrocarbon bearing sands below 19,999 feet SSTVD; or

b. the expiration of the drilling permit used to obtain pre-qualifying status, whichever is earlier, but under no circumstances on or after June 30, 2009; and

3. the serial number of the dry hole credit well providing the basis for the dry hole credit and the amount of dry hole well cost (computed from the letter of certification of dry hole credit well status) which may be used to offset royalty payments if the pre-qualifying well becomes a royalty relief receiving well; and

4. reference, as an attachment, to the wetlands impact mitigation letter and agreement between the applicant and the Office of Coastal Restoration and Management reiterating applicant's agreement to mitigate found by the Office of Coastal Restoration and Management, but not less than 125 percent of any actual wetlands impact, upon drilling the pre-qualifying well.

D. Under no circumstances shall a well permitted as a re-entry into an existing well bore, whether for deepening, sidetracking or otherwise, qualify for certification as a pre-qualifying well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006).

§409. Application for Status as a Royalty Relief Receiving Well

A. Only a pre-qualifying well may become a royalty relief receiving well.

B. A party drilling a pre-qualifying well which is logged and deemed productive from hydrocarbon bearing sands below 19,999 feet SSTVD as a producing well may request certification as a royalty relief receiving well by completing the appropriate form provided by, and returning same to OMR at P.O. Box 2827, 617 North Third Street, LaSalle Building, Eighth Floor, Baton Rouge, LA 70821-2827, accompanied by the following documentation, to-wit:

1. written proof, including appropriate portions of the drilling report showing spud location and date, and bottom hole location, date and SSTVD; the completion report and log showing SSTVD of all perforations which contribute to the present productivity; plats showing the state lease on which the well is drilled; unit plats, Office of Conservation orders or voluntary unit agreements, if drilled within a unit, showing unit allocation of acreage of the state lease on which well is drilled in proportion to total unit acreage; and data from well tests reasonably calculated to test for productivity in all completions below 19,999 feet SSTVD, indicating that:

a. the well was spudded between July 1, 2005 and completed before June 30, 2009; and

b. the well is completed as productive from hydrocarbon bearing sands below 19,999 feet SSTVD as well as the percentage of perforations below 19,999 feet SSTVD; and

c. the well is drilled on a state mineral lease in the coastal zone of Louisiana; and

d. if the well is drilled in a unit, the proportion of state mineral lease acreage on which the well is drilled as allocated in the unit to the total acreage of the unit; and

2. the pre-qualification well certification issued by OMR showing the serial number of the pre-qualifying well, the party receiving the pre-qualifying well status and the sum of money attributed to the dry hole well cost which may be used to offset royalty payments to the state from the royalty relief receiving well; all of which indicates that the well for which royalty relief receiving well status is sought has been pre-qualified, that the applicant for royalty relief receiving well status is the same party or entity to whom the pre-qualifying well certification was given and, if applicable, the amount of dry hole well cost which may be applied to offset royalty payments to the state on production from the royalty relief receiving well, if certified. All information obtained by OMR relating to qualifying a drilled and completed well as a royalty relief receiving well shall be kept in a database at OMR as a public record.

C. If applicant's well meets all of the criteria set forth in Act 298 of the 2005 Regular Session of the Louisiana Legislature as necessary to earn a dry hole credit offset, as evidenced by the information furnished in Subsection B above, OMR shall:

1. determine the total amount of dry hole credit which may be used to offset royalty payments to the state if the royalty relief receiving well status is granted by:

a. ascertaining the Platts spot market price per cubic foot of natural gas at the Henry Hub (or any other gas gathering and marketing facility recognized by OMR from which spot market sales of gas occur, if Henry Hub is not available for comparison pricing) and multiply that price by 5 billion cubic feet of gas to arrive at a sum of money; then

b. comparing the sum of money obtained in Subparagraph a herein to that portion of the dry hole well cost which may be used as a dry hole credit as set forth on the pre-qualifying well certification; and

c. determining the lesser of the two amounts as the total dry hole credit which may be used; and

2. if the royalty relief receiving well is a unit well, ascertain the proportion of acreage allocated to the state lease on which the pre-qualifying well was actually drilled (bottom holed) within the unit to the entire acreage of the unit and multiply that proportion by the total value of the dry hole credit as previously determined in Paragraph 1

hereinabove to obtain the revised dry hole credit allowed to offset royalty payments to the state from unit production allocated to the state lease; and

3. divide the value of the dry hole credit determined in Paragraphs 1 and 2 hereinabove by 36 to yield the maximum monthly value of dry hole credit which may be used by the royalty payer to offset monthly royalty payments to the state; and

4. notify the Office of Conservation that it is in the process of qualifying a newly drilled and completed well as a royalty relief receiving well and have the applicant request that said Office of Conservation issue a new, unique LUW code for production purposes to the well serial number of the pre-qualifying well sought to by certified as a royalty relief receiving well (no letter certifying status as a royalty relief receiving well will be issued until the Office of Conservation has issued the new, unique LUW code as requested); and

5. issue a letter certifying the previously certified pre-qualifying well, by serial number, as a royalty relief receiving well, which shall also contain the new, unique LUW code issued to that well by the Office of Conservation, the total monthly amount of dry hole credit, as calculated over a 36 month period, which may be used to offset any monthly royalty payments due the state on production from, or attributable to, the royalty relief receiving well, with the proviso that under no circumstances shall the value of monthly royalty paid to and received by the state on production from the royalty relief receiving well amount to less than one-eighth of the total value received for the sale of monthly production, less other lease allowable deductions, allocated to the lease on which the royalty relief receiving well is located.

D. Certification as a royalty relief receiving well shall attach to, and only to, the former pre-qualifying well so certified, regardless of whether interests in the said royalty relief receiving well or the lease on which the said well is located are transferred subsequent to the certification. The dry hole credit offset amount specified in the certification shall be available only to the royalty payer on royalty due the state on production from the said royalty relief receiving well.

E. The decimal percentage of production due the state which yields the value from which the dry hole credit may be deducted by the royalty payer shall be the royalty specified in the state mineral lease on which the royalty relief receiving well is located or, if a unit well, the decimal portion allocated to that lease within the unit. However, at no time shall the monthly royalty, in value, paid to the state, after deducting the maximum allowed value of the monthly dry hole credit offset, amount to less than one-eighth of the total value received for the sale of monthly production, less other lease allowable deductions, allocated to the lease on which the royalty relief receiving well is located, as mandated in R.S. 30:127 and Act 298 of the 2005 Regular Session of the Louisiana Legislature. If the royalty payer on production from the royalty relief receiving well determines that, by deducting the maximum monthly value of the dry hole credit offset allowed, the value of the monthly royalty payment to the state would amount to less than the value of a one-eighth royalty, then the royalty payer shall deduct only that much of the monthly value of the dry hole credit offset allowed as will yield a royalty payment to the state of the value of a one-eighth royalty.

F. Applicant must designate by registered business name, domiciliary address, current telephone number, facsimile number (if one) and e-mail address, the royalty payer which would be authorized by OMR to apply the extension of dry hole credit royalty relief beyond the 36 month period initially granted by OMR.

G. Only one dry hole credit well may form the basis for a dry hole credit to be used to offset royalty payments to the state from only one royalty relief receiving well, and no more than 20 dry hole credit wells, in total, may be utilized as a basis to offset royalty payments to the state. The royalty relief dry hole credit shall be deemed issued when the pre-qualifying well has been certified as a royalty relief receiving well and its utilization to offset royalty payable to the state must begin within four years of the date of said certification.

H. If the pre-qualifying well is drilled and is a dry hole, the applicant may initiate the process to have that well qualified as a dry hole credit well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1611 (September 2006).

§411. Extending the Dry Hole Credit Offset beyond Thirty-Six Months

A. If the payer of royalty on production from, or allocated to, a certified royalty relief receiving well is not able to utilize the full amount of the dry hole credit determined as applicable to that royalty relief receiving well to offset royalty payments to the state within the 36 month period from date of first production, a request, in writing, by the party or entity entitled to the dry hole credit to OMR to extend the period of royalty offset beyond the 36 month period may be made. The written request must identify, by LUW code and serial number, the certified royalty relief receiving well on which the extension of royalty offset is being requested, the total amount of dry hole credit utilized to offset royalty payments to the state in the 36 month period and the level of production of the royalty relief receiving well at the time of the request. The written request must be accompanied by the letter certifying the royalty relief receiving well status.

B. Should OMR decide to grant the extension, it shall issue a letter authorizing the full monthly dry hole credit offset on royalty payments to the state, which was previously granted for the 36 month period, to continue for an extension period not to exceed 24 additional months or until the full dry hole credit value is utilized, whichever is earlier. Under no circumstances shall the value of monthly royalty paid to the state during the extended 24 month period fall below the value of a one-eighth royalty, as specified in R.S. 30:127, nor shall the additional dry hole credit period exceed a total

of 60 months or remain in force beyond June 30, 2013, whichever is earlier. Any dry hole credit offset not utilized within 60 months from date of first production, or before June 30, 2013, shall be lost to the payer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006).

§413. Termination of Dry Hole Credit Offset

A. Should the total dry hole credit issued to a royalty relief receiving well be utilized in full to offset royalty payments to the state within 36 months from date of first production (or within the additional 24 month extension if granted), or a total of 60 months elapse from date of first production from the royalty relief receiving well without the total dry hole credit being utilized, or June 30, 2013 arrive, in either case, OMR shall issue a letter notifying the payer that, as of a certain date, no further dry hole credit will be available for offset against royalty paid to the state from production from that royalty relief receiving well. Upon issuance of that letter, OMR shall note the serial number and LUW code of that royalty relief receiving well in its database as one of only 20 such royalty relief receiving wells to be allowed.

B.1.a. Should production cease in whole or in part from productive sands below 19,999 feet in a royalty relief receiving well due to either:

i. a plug back from the formerly producing, but depleted sand below 19,999 feet and perforation into and production from sands above 19,999 feet in the same well; or

ii. perforations into and production from sands above 19,999 feet commingled with production from sands below 19,999 feet in the same well;

b. the dry hole credit offset allowed against production from that well shall be terminated in whole or in part in proportion to the percentage of production derived from sands above 19,999 feet as determined by the ratio of the rate of flow from perforations above and below 19,999 feet.

2. If production from sands below 19,999 feet remains separate from production from sands above 19,999 feet in the same royalty relief receiving well, the dry hole credit offset may be used against the production from below 19,999 feet only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006).

Title 43
NATURAL RESOURCES
Part VI. Water Resources Management
Subpart 1. Ground Water Management

Chapter 1. General Provisions

§101. Applicability

A. The rules and regulations of this Subpart shall be applicable to the commissioner's jurisdiction regarding:

1. critical ground water areas;
2. ground water emergencies; and
3. management of the state's ground water resources.

B. The rules shall not alter or change the right of the commissioner to call a hearing for the purpose of taking action with respect to any matter within the commissioner's jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1212 (June 2004).

§103. Definitions

A. The words defined herein shall have the following meanings when used in these Rules and Regulations for this Subpart. All other words used and not defined shall have their usual meanings unless specifically defined in Title 38 of the Louisiana Revised Statutes.

Aquifer—a ground water bearing stratum of permeable rock, sand, or gravel.

Beneficial Use—the technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational, or therapeutic purposes or any other advantageous purpose.

Commission—Ground Water Resources Commission authorized by R.S. 38:3097.4.

Commissioner—Commissioner of Conservation.

Critical Ground Water Area—an area in which, under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained due to either movement of a salt water front or water level decline, or subsidence, resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts.

Domestic Well—a well used exclusively to supply the household needs of the owner lessee or his family. Uses may include drinking, cooking, washing, sanitary purposes, lawn and garden watering and caring for pets. *Domestic wells* shall also include wells used on private farms and ranches for the feeding and caring of pets and watering of lawns, excluding livestock, crops, and ponds.

Ground Water—water suitable for any beneficial purpose percolating below the earth's surface which contains less than 10,000 mg/l total dissolved solids, including water suitable for domestic use or supply for a domestic water system.

Ground Water Emergency—an unanticipated occurrence as a result of a natural force or a man-made act which causes a ground water source to become immediately unavailable for beneficial use for the foreseeable future or drought conditions determined by the commissioner to warrant the temporary use of drought relief wells to assure the sustained production of agricultural products in the state.

Large Volume Well—a well with an 8 inch or greater diameter screen size or as further defined within these regulations.

Person—any natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

Replacement Well—a well located within 1,000 feet of the original well and within the same property boundary as the original well, installed within the same aquifer over an equivalent interval with an equivalent pumping rate, and used for the same purpose as the original well.

Spacing—the distance a water well may be located in relation to an existing or proposed water well, regardless of property boundaries.

Sustainability—the development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

User—any person who is making any beneficial use of ground water from a well or wells owned or operated by such person.

Well or Water Well—any well drilled or constructed for the principal purpose of producing ground water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1212 (June 2004).

Chapter 3. Critical Ground Water Area Application Procedure

§301. Who May Apply—Applicant

A. Any owner of a well that is significantly and adversely affected as a result of the movement of salt water front, water level decline, or subsidence in or from the aquifer drawn on by such well shall have the right to file an application to request the commissioner to declare that an area underlain by such aquifer(s) is a critical ground water area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1212 (June 2004).

§303. Notice of Intent to File an Application

A. The applicant shall have published a Notice of Intent to file an application for a critical ground water area designation the official parish journal of each parish affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;

2. a brief description of the subject matter of the proposed application;

3. a brief description of location including parish(es), section(s), township(s), range(s), and a map, which shall be sufficiently clear to readily identify the location of the proposed area;

4. a statement that, if the area is designated a critical ground water area, ground water use may be restricted;

5. a statement indicating where in the application can be viewed; and

6. a statement that all comments should be sent to:

Commissioner of Conservation
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Director, Ground Water Resources Division

B. A Notice of Intent to file an application for the removal or modification of a critical ground water area designation shall be published in the official parish journal of each parish affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;

2. a brief description of the subject matter of the proposed application;

3. a brief description of location including parish(es) section(s), township(s), range(s), and a map, which shall be sufficiently clear to readily identify the location of the proposed area;

4. a statement that, if the critical ground water area designation is removed or modified, current restrictions, if any, shall be rescinded or modified;

5. a statement indicating where in the application can be viewed; and

6. a statement that all comments should be sent to:

Commissioner of Conservation
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Director, Ground Water Resources Division

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1213 (June 2004).

§305. Application Content

A. An application for a critical ground water area designation or for the removal or a modification of a critical ground water area designation shall be filed with the commissioner of conservation at the above address no sooner than 30 days and no later than 60 days after publication of the Notice of Intent. Five copies of the application shall be filed, and must include:

1. the name, address, telephone number, and signature of the applicant;

2. a statement identifying the applicant's interest which is or may be affected by the subject matter of the application;

3. identification of the source of ground water (aquifer) to which the application applies;

4. identification of the proposed critical ground water area or area proposed to be modified or removed from a critical ground water area designation, including but not limited to:

a. its location [section(s), township(s), range(s) and parish(es)];

b. a map clearly identifying the boundaries of the subject area of the application, such as but not limited to:

i. U.S. Geological Survey topographic map(s) of appropriate scale (1:24,000, 1:62,500, 1:100,000); or

ii. LA-DOTD Louisiana parish map(s) outlining the perimeter of the area; or

iii. a digital map submitted in vector and/or raster formats, including the supporting metadata;

5. statement of facts and evidence supporting one of the following claims:

a. that no action would likely negatively impact ground water resources in the aquifer, if the application is pursuant to §307.A;

b. that alleviation of stress to the aquifer has occurred; if the application is pursuant to §307.B;

6. the proof of publication of Notice of Intent to apply to the commissioner.

B. Direct Action by the Commissioner for Critical Ground Water Area Hearing

1. The commissioner may initiate a hearing to consider action with respect to a specific ground water area.

2. The commissioner shall notify the public pursuant to §303 and §501.A prior to issuing an order.

3. The information presented by the commissioner at the hearing shall include but not be limited to information pursuant to §305.A and §307.

C. Application for Groundwater Emergency Hearing

1. Notwithstanding the provisions of Subsections A and B hereof, the commissioner may initiate action in response to an application of an interested party or upon the commissioner's own motion in response to a ground water emergency.

2. Subsequent to adoption of a proposed emergency order that shall include designation of a critical ground water area and/or adoption of a emergency management plan for an affected aquifer, the commissioner shall promptly schedule a public hearing pursuant to §501.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1213 (June 2004).

§307. Criteria for a Critical Ground Water Designation

A. Application for designation of a critical ground water area shall contain a statement of facts and supporting evidence substantiating that under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts caused by at least one of the following criteria:

1. water level decline; and/or

2. movement of a saltwater front; and/or

3. subsidence in or from the aquifer caused by overall withdrawals.

B. If the applicant is applying for modification or removal of a critical ground water area designation, the application must contain a statement of facts and supporting evidence substantiating the alleviation of the original cause of designation.

C. Applicant shall also submit recommendations regarding the critical ground water area including but not be limited to the following:

1. the proposed boundaries of the critical ground water area; and

2. a proposal to preserve and manage the ground water resources in the critical ground water area pursuant to R.S. 38:3097.6.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1213 (June 2004).

§309. Review of Critical Ground Water Area Application

A. Within 30 days of receipt of an application pursuant to §305.A, the commissioner shall notify the applicant whether the application is administratively complete.

B. If the commissioner determines an application is incomplete, the applicant shall be notified in writing of the information needed to make such application administratively complete.

C. The applicant shall have 180 days to respond to a request by the commissioner for more information.

D. The commissioner may reject and return any application determined to be:

1. without merit or frivolous; or

2. incomplete after the applicant's response to the commissioner's request for more information, unless the remaining information required by the commissioner is minor in its nature.

E. Using available data, an analysis shall be made by the commissioner to determine if the area under consideration meets the criteria to be designated a critical ground water area or can be modified or removed from a critical ground water area designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1214 (June 2004).

§311. Recordkeeping

A. The commissioner shall compile and maintain at the Office of Conservation a record of all public documents relating to any application, hearing, or decision filed with or by the commissioner.

B. The commissioner shall make records available for public inspection free of charge and provide copies at a reasonable cost during all normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Conservation, Office of Conservation, LR 30:1214 (June 2004).

Chapter 5. Hearings

§501. Notice of Hearings

A. Critical Ground Water Area Preliminary Hearing Pursuant to §305.A or §305.B

1. Upon determination that an application is administratively complete and if the commissioner deems it necessary, a preliminary public hearing may be scheduled at a location determined by the commissioner in the locality of the area affected by the application.

2 Notice of the preliminary hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

3. Such notice shall be published in the official state journal and in the official parish journal of each parish affected by the application at least 30 calendar days before the date of such hearing.

4. The commissioner shall send a copy of the notice or similar notification to the applicant, any person requesting notice, and local, state and federal agencies that the commissioner determines may have an interest in the decision relating to the application.

B. Critical Ground Water Area Hearing Pursuant to §305.C and §505.B

1. Should the commissioner determine that a preliminary hearing is not necessary, a draft order shall be issued, pursuant to R.S. 38:3097.6.A and a hearing shall be scheduled, pursuant to this Subsection.

2. The commissioner shall notify the public of any hearing initiated by the commissioner as a result of an action, a minimum of 15 days prior to the hearing.

3. Hearings initiated by the commissioner shall be held in the locality of those affected by the draft order.

4. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

5. Such notice shall be published in the official state journal and in the official parish journal of each parish affected by the commissioner's petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1214 (June 2004).

§503. Rules of Conduct

A. Hearings scheduled pursuant to this subpart shall be fact-finding in nature and cross-examination of the witnesses shall be limited to the commissioner and staff.

1. The commissioner, or a designee, shall serve as presiding officer, and shall have the discretion to establish reasonable limits upon the time allowed for statements.

2. The applicant may first present all relative information supporting their proposal followed by testimony and/or evidence from local, state and federal agencies and others.

3. All interested parties shall be permitted to appear and present testimony, either in person or by their representatives.

4. All hearings shall be recorded verbatim.

5. Copies of the transcript shall be available for public inspection at the Office of Conservation.

6. The testimony and all evidence received shall be made part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1214 (June 2004).

§505. Decision of the Commissioner

A. Following hearings held pursuant to §305.C or §501.A, the commissioner shall issue a written decision in the form of a draft order based on scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. The draft order shall contain a statement of findings, and shall include but shall not be limited to:

1. the designation of the critical ground water area boundaries; and

2. the recommended plan to preserve and manage the ground water resources of the critical ground water area pursuant to R.S. 38:3097.6.B.

B. The commissioner shall make the draft order and proposed plan to preserve and manage ground water resources of the proposed critical ground water area available to the applicant, participants in the original application hearing and any other persons requesting a copy thereof. The commissioner in accordance with §501.B shall initiate hearings on the draft order and proposed management controls in the locality of those affected by the commissioner's draft order.

C. Final Orders. The commissioner shall adopt the final orders and plan to preserve and mange ground water resources after completion of §501.B. The final orders shall be made a part of the permanent records of the commissioner in accordance with §311 and shall be made available to the public upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004).

§507. Right of Appeal

A. Critical Ground Water Area Designation orders of the commissioner may be appealed only to the Nineteenth Judicial District Court as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004).

Chapter 7. Water Well Notification Requirements in Non-Critical Ground Water Areas

§701. Applicability

A. All new water wells, pursuant to Subsections B and C of this Section, are required to be installed by a licensed water-well drilling contractor, pursuant to LAC 46:LXXXIX, and registered through the Department of Transportation and Development (DOTD) pursuant to LAC 56:I et seq. within 30 days after completion.

B. All new water wells except those types specifically listed in §701.C require a water well notification form be submitted to the commissioner by the owner of the well at least 60 days prior to installation..

C. All new water wells of the following types require a water well notification form be submitted to the commissioner by the owner of the well no later than 60 days after installation:

1. domestic well;

2. replacement well;

3. drilling rig supply well;

4. drought relief well:

a. use of the drought relief well type must be approved by the commissioner, pursuant to R.S. 38:3097.3(C)(9), prior to installation; and

5. all other wells the commissioner exempts for just cause:

a. there shall be no just cause exemptions granted for large volume wells;

b. the commissioner shall base exemptions on, but not be limited to:

i. proximity to other wells;

ii. beneficial use; or

iii. latest scientific data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004).

§703. Notification Requirements

A. Pursuant to R.S. 38:3097.3.C(4)(a), the commissioner is authorized to collect the following information on the water well notification form:

1. date drilled or estimated date to be drilled;

2. name of driller;

3. current ownership;

4. projected location of the well in longitude and latitude;

5. depth;

6. casing size; and

7. other reasonable information required by the commissioner.

B. Pursuant to §703.A.7, the following reasonable information is required by the commissioner on the water well notification form:

1. purpose of form, including but not limited to:

a. prior notification, pursuant to §701.B;

b. post notification, pursuant to §701.C;

c. well exempted for just cause, pursuant to R.S. 38:3097.3.C(4)(a)(v);

d. drought well authorization, pursuant to R.S. 38:3097.3.C(9);

e. information change; or

f. cancellation of notification because well not drilled;

2. well information, including but not limited to:

a. owner's well number;

b. well use;

c. aquifer screened; and

d. estimated pumping rate;

3. well location, including but not limited to:

a. parish; and

b. longitude and latitude; or

c. if longitude and latitude is unavailable:

i. a map with the well location marked; or

ii. a hand drawn map that includes enough detail so that someone unfamiliar with the area can find the well;

4. drilling contractor, including but not limited to:

a. driller's contact information;

b. driller's license number; and

c. third party or consultant's contact information;

5. owner's signature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004).

§705. Notification Review Process

A. The commissioner shall review the submitted information, pursuant to §701.B, within 30 days.

1. The commissioner may:

a. issue an order placing restrictions on the well; or

b. request further reasonable information; or

c. take no action.

2. Should the commissioner request additional reasonable information for new wells, pursuant to §705.A.1, the commissioner shall have an additional 30 days from the date the information is received to review the water well notification form.

B. For a large volume well, the commissioner may, within 30 days after receiving prior notification, pursuant to §701.B, issue to the owner an order fixing:

1. allowable production;

2. spacing; and

3. metering.

C. For all other wells in a non-critical ground water area, the commissioner may issue an order to the owner within 30 days of receiving prior notification, pursuant to §701.B, which may only fix spacing of the well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1216 (June 2004).

§707. Right of Appeal

A. Within 30 days of the date of the correspondence regarding Paragraphs 1 and 2 of this Subsection, the applicant may appeal to the Ground Water Resources Commission to determine one of the following:

1. the reasonableness of the commissioner's request, pursuant to Section §705.A; or

2. the justification for the commissioner's well restriction order, pursuant to Section §705.B and C.

B. The appeal shall be addressed to:

Ground Water Resources Commission
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Chairperson, Ground Water Resources Commission

C. The commission may make a determination within 45 days from the date of the appeal, pursuant to R.S. 38:3097.3.C(4)(b)(iii), regarding the reasonableness of the commissioner's request, pursuant to Subsection A.1 of this Section.

D. The commission may review the appeal of an applicant, pursuant to Subsection A.2 of this Section, and may make a determination regarding the commissioner's well restriction order.

1. The commission may reject the commissioner's order and require the commissioner to reconsider such order.

2. An order that has been returned to the commissioner twice shall be considered a final decision.

E. A final decision of the commissioner may be appealed only to the Nineteenth Judicial District Court as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1216 (June 2004).